



भारत का राजपत्र The Gazette of India

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NEW DELHI, SATURDAY, JUNE 20, 1998/JYAISTHA 30, 1920

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (II) PART II—Section 3—Sub-Section (II)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
(कार्मिक और प्रशिक्षण-विभाग)
नई दिल्ली, 29 मई, 1998

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
AND PENSION
(Department of Personnel and Training)

New Delhi, the 29th May, 1998

का०आ० 1185.—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं० 25) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए निम्नलिखित अपराधों को दिल्ली विशेष पुलिस स्थापना द्वारा अन्वेषित किए जाने वाले अपराधों के रूप में चिनिदिष्ट करती है, नामतः—

S.O. 1185.—In exercise of the powers conferred by Section 3 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government hereby specifies the following offences as the offences which are to be investigated by Delhi Special Police Establishment namely :—

(क) भारतीय दंड संहिता, 1860 (1860 का अधिनियम सं० 45) की धारा 461 के अधीन दंडनीय अपराध और ;

(a) Offences punishable under Section 461 of Indian Penal Code, 1860 (Act No. 45 of 1860); and

(ख) उपर्युक्त अपराधों से संबंधित अथवा संसक्त प्रयत्नों, दुष्प्रेरणों और षड्यंत्रों तथा उन्हीं तथ्यों से उद्भूत अथवा उसी संव्यवहार के अनुक्रम में किया गया कोई अन्य अपराध अथवा किए गए अन्य अपराध ।

(b) Attempts, abetments and conspiracies in relation to, or in connection with offences mentioned above and any other offence or offences committed in the course of the same transaction or arising out of the same facts.

[No. 228/24/98-AVD. II]
HARI SINGH, Under Secy.

नई दिल्ली, 1 जून, 1998

[सं० 228/65/98-ए०बी०डी.-II]
हरि सिंह, अवर सचिव

का०आ० 1186.—केन्द्रीय सरकार, दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए गृह विभाग के आदेश सं० एफ० 14/4/गृह-5/98 तारीख 28-05-98 द्वारा प्राप्त

राजस्थान सरकार की सहमति से थाना बजाज नगर, जयपुर शहर में भारतीय दंड संहिता की धारा 365, 366, 363, 376, 323, 120बी० के अधीन रजिस्ट्रीकृत मामला सं० 227/98 या उक्त मामले से उत्पन्न वैसे ही संव्यवहार के अनुक्रम में किए गए अन्य अपराध के संबंध में अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण राजस्थान राज्य पर करती है।

[सं० 228/25/98-ए०बी०डी०-II]

हरि सिंह, अवर सचिव

New Delhi, the 1st June, 1998

S.O. 1186—In exercise of the powers conferred by sub-section (1) of Section 5 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946) the Central Government, with the consent of the State Government of Rajasthan vide Home Department Order No. F. 14(4) Home-5198 dated 28-5-1998 issued under Section 6 of Delhi Special Police Establishment Act, 1946 hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Rajasthan for investigation of case No. 227/1998 under Sections 365, 366, 363, 376, 323, 120-B IPC, 1860 (Act No. 45 of 1860) registered at PS Baijnagar, Jaipur City of the Code of Criminal Procedure Code (Act, No. 2 of 1974) or any other offences committed in the course of same transaction arising out of the said case.

[No. 228/25/98-AVD. II]

HARI SINGH, Under Secy.

नई दिल्ली, 4 जून, 1998

का०आ० 1187.—केन्द्रीय सरकार, दंड प्रक्रिया-संहिता, 1973, (1974 का अधिनियम संख्या 2) की धारा 24 की उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करके, इस समय देहरादून में वकालत कर रहे श्री दलजीत सिंह, अधिवक्ता को एतद्द्वारा, विशेष न्यायाधीश देहरादून (उत्तर प्रदेश) की अदालत में, आर०सी० संख्या 1(ए)/87-ए०सी०यू० IV/सी०बी०आई०/नई दिल्ली के तहत मुकदमें (राज्य बनाम महेश चन्द्र, तत्कालीन मुख्य अभियन्ता, राष्ट्रीय जल-विद्युत-निगम, टनकपुर, बनबसा, नैनीताल, उत्तर प्रदेश) के संबंध में अभियोजन करने के लिए तथा उससे जुड़े किसी अन्य मामले अथवा उक्त प्रसंग में किसी अन्य न्यायालय में उठने वाले मामले के संबंध में, विशेष लोक अभियोजक नियुक्त करती है।

[सं० 225/23/98-ए०बी०डी०-ii]

हरि सिंह, अवर सचिव

New Delhi, the 4th June, 1998

S.O. 1187.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974). The Central Government hereby appoints Shri Baljeet Singh, Advocate presently based at Dehradun as Special Public Prosecutor for Conducting the prosecution of case RC-No. 1(A)/87-ACU. IV/CBI/New Delhi (State Vs. Mahesh Chandra, the then Chief Engineer, N.H.P.C., Tanakpur, Banbasa, Nainital, Uttar Pradesh) in the Court of Special Judge, Dehradun (Uttar Pradesh) and any other matter connected therewith or incidental thereto in any other Court.

[No. 225/23/98-AVD. II]

HARI SINGH, Under Secy.

नई दिल्ली, 8 जून, 1998

का०आ० 1188.—केन्द्रीय सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं० 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए ओ०पी० सं० 6258/91-टी विनांक 10 जुलाई, 1997 में केरल के माननीय उच्च न्यायालय के निदेशानुसार जारी केरल राज्य सरकार के गृह (जे) विभाग की विनांक 21 अगस्त, 1997 की अधिसूचना सं० 47235/जे-1/97/होम द्वारा प्राप्त केरल राज्य सरकार की सहमति से दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार अरालाम पुलिस स्टेशन, जिला कन्नूर, केरल के मामला अपराध सं० 39/88 में भारतीय दंड संहिता 1860 (1860 का अधिनियम सं० 45) की धारा 457, 380 और 461 के अधीन दंडनीय अपराधों तथा श्री कन्नोत मम्मोत्ती की अप्राकृतिक मृत्यु से संबंधित अरालाम पुलिस स्टेशन, जिला कन्नूर, केरल के मामला अपराध सं० 94/88 (अपराध मामला सं० 225/सीआर/91 में अपराध शाखा द्वारा पुनः अन्वेषित) से संबंधित अपराधों तथा उक्त अपराधों और अपराध मामलों से संबंधित अथवा संसक्त प्रयत्नों, घुड़चोरणों और पड़चोरों तथा उन्हीं तथ्यों से उत्पन्न अथवा उसी संव्यवहार के अनुक्रम में किए गए किसी अन्य अपराध/अपराधों के अन्वेषण के लिए सम्पूर्ण केरल राज्य पर करती है।

[सं० 228/65/97-ए०बी०डी०-II]

हरि सिंह, अवर सचिव

New Delhi, the 8th June, 1998

S.O. 1188.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Kerala vide Home (J) Department Notification No. 47235/J1/97/Home dated 21st August, 1997 issued as per the directions of the Hon'ble High Court of Kerala in O.P. No. 6258/91-T dated 10th July, 1997, hereby extends the powers and jurisdiction of the members of Delhi Special Police Establishment to the whole of the State of Kerala for investigation of offences punishable under Sections 457, 380, and 461 Indian Penal Code, 1860 (Act No. 45 of 1860) of Crime No. 39/88 of Aralam Police Station, Kannur District, Kerala and offences of the case bearing crime No. 94/88 of Aralam Police Station, Kannur District, Kerala relating to the unnatural death of Shri Kannothe Mammottu (re-investigated by the Crime Branch in Crime No. 225/CR/91) and attempts, abetments and conspiracies in relation to or in connection with the offences and above crime cases and any other offence/offences committed in the course of same transaction or arising out of the same facts.

[No. 228/65/97-AVD. II]

HARI SINGH, Under Secy.

नई दिल्ली, 10 जून, 1998

का०आ० 1189.—केन्द्रीय सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं० 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते

हुए मध्य प्रदेश राज्य सरकार की सहमति से उनके दिनांक 30-5-98 के गृह (पुलिस विभाग) अधिसूचना सं० एफ-12-67/98-बी-(I) II भोपाल द्वारा पुलिस थाना खानिया धाना, जिला शिवपुरी, मध्य प्रदेश में दर्ज एफआईआर सं० 36/98 के सम्बन्ध में आईपीसी की धारा 497, 380, 295 आईपीसी के अन्तर्गत दण्डनीय किसी अन्य अपराध तथा उसी संघ्यवहार के अनुक्रम में किए गए अथवा उन्हीं तथ्यों से उद्भूत उक्त अपराधों से सम्बन्धित अथवा संसक्त किन्हीं अन्य अपराधों, प्रयत्नों, दुष्प्रेरणों तथा पडयंत्रों के लिए विल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तारण सम्पूर्ण मध्य प्रदेश राज्य पर करती है।

[सं० 228/28/98-ए०वी०डी०-II]

हरि सिंह, अवर सचिव

New Delhi, the 10th June, 1998

S.O. 1189.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government, with the consent of Government of Madhya Pradesh vide Home (Police) Department Notification No. 12-67/98/13(1)-II Bhopal dated 30-5-1998, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Madhya Pradesh for investigating of offences punishable under sections 457, 380, 295 of Indian Penal Code, 1860 (Act No. 45 of 1860) of Case FIR No. 36/98 registered at Khaniya Dhana Police Station, District Shivpuri, Madhya Pradesh relating to theft of Antique idols of Jain Temple of Golakot in District Shivpuri (M.P.) and attempt abetment and conspiracy in relation to or in connection with one or more of the offences mentioned above and any other offence or offences committed in the course of the same transaction or arising out of the same facts.

[No. 228/28/98-AVD. II]

HARI SINGH, Under Secy.

वित्त मंत्रालय

(राजस्व विभाग)

आदेश

नई दिल्ली, 2 जून, 1998

स्टाम्प

का०आ० 1190.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उपधारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा दामोदर घाटी निगम, कलकत्ता को मात्र पचहत्तर लाख रु० का समेकित स्टाम्प शुल्क अदा करने की अनुमति प्रदान करती है, जो उक्त निगम द्वारा जारी किए जाने वाले एक सौ करोड़ रु० के समग्र मूल्य के 1-1 लाख रु० मूल्य वाले ऋण-पत्रों के स्वरूप के 10,000 - 13.75% करा-धेय सुरक्षित विमोच्य (8वीं शृंखला) सार्वजनिक बंधपत्रों पर स्टाम्प शुल्क के रूप में प्रभावी है।

[फा० सं० 21/98-स्टाम्प-फा० सं० 15/7/98-बि० क०]

एस० कुमार, अवर सचिव

MINISTRY OF FINANCE

(Department of Revenue)

ORDER

New Delhi, the 2nd June, 1998

STAMPS

S.O. 1190.—In exercise of the powers conferred by clause (b) of sub-section (1) of Section 9 of the Indian Stamps Act, 1899 (2 of 1899), the Central Government hereby permits Damodar Valley Corporation, Calcutta to pay consolidated stamp duty of Rs. 75 lakhs only chargeable on account of the stamp duty on 10,000—13.75% Taxable Secured Redeemable (8th Series) Public Sector Bonds in the nature of debentures of rupees one lakh each aggregating to rupees one hundred crores only to be issued by the said corporation.

[No. 21/98-STAMPS; F. No. 15/7/98-ST]

S. KUMAR, Under Secy.

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 3 जून, 1998

का०आ० 1191.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 56 के साथ पठित धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक की सिफारिश पर घोषणा करती है कि उक्त अधिनियम की धारा 11 की उपधारा 1 के उपबंध सरकारी राजपत्र में इस अधिसूचना के प्रकाशन की तारीख से 31 मार्च, 2001 तक दि जिला सहकारी मध्यवर्ती बैंक लि०, मेडक, आन्ध्र प्रदेश पर लागू नहीं होंगे।

[सं० एफ. 1(19)/98-ए०सी०ii]

एस०के० ठाकुर, अवर सचिव

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 3rd June, 1998

S.O. 1191.—In exercise of the powers conferred by Section 53 read with Section 56 of the Banking Regulation Act, 1949 (10 of 1949) the Central Government on the recommendations of the Reserve Bank of India declares that the provisions of sub-section (1) of Section 11 of the said Act shall not apply to the District Co-operative Central Bank Ltd., Medak, Andhra Pradesh from the date of publication of this notification in the Official Gazette to 31 March, 2001.

[F. No. 1(19)/98-AC]

S. K. THAKUR, Under Secy.

नई दिल्ली, 3 जून, 1998

का०आ० 1192.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 56 के साथ पठित धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक की सिफारिश पर घोषणा करती है कि उक्त अधिनियम की धारा 11 की उपधारा 1 के उपबन्ध इरकारी राजपत्र में इस अधिसूचना के प्रकाशन की तारीख से 31 मार्च, 2001 तक जिला सहकारी मध्यवर्ती बैंक लि०, महबूबनगर पर लागू नहीं होंगे।

[सं० एफ. 1(20)/98-ए०सी०]

एस०के० ठाकुर, अवर सचिव

New Delhi, the 3rd June, 1998

S.O. 1192.—In exercise of the powers conferred by Section 53 read with Section 56 of the Banking Regulation Act, 1949 (10 of 1949) the Central Government on the recommendations of the Reserve Bank of India declares that the provisions of sub-section 1 of Section 11 of the said Act shall not apply to the District Co-operative Central Bank Ltd., Mahabubnagar from the date of publication of this notification in the Official Gazette to 31 March, 2001.

[F. No. 1(20)/98-AC]

S. K. THAKUR, Under Secy.

नई दिल्ली, 3 जून, 1998

का०आ० 1193.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 56 के साथ पठित धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार भारतीय रिजर्व बैंक की सिफारिश पर घोषणा करती है कि उक्त अधिनियम की धारा 11 की उपधारा 1 के उपबन्ध सरकारी राजपत्र में इस अधिसूचना के प्रकाशन की तारीख से 31 मार्च, 2001 तक दी वारंगल जिला सहकारी मध्यवर्ती बैंक लि०, सुबेदारी, हनमकोंडा पर लागू नहीं होंगे।

[सं० 1(21)/98-ए०सी०]

एस०के० ठाकुर, अवर सचिव

New Delhi, the 3rd June, 1998

S.O. 1193.—In exercise of the powers conferred by Section 53 read with Section 56 of the Banking Regulation Act, 1949 (10 of 1949) the Central Government on the recommendations of the Reserve Bank of India declares that the provisions of sub-section 1 of Section 11 of the said Act shall not apply to the Warangal District Co-operative Central Bank Ltd., Subedari, Hanamkonda from the date of publication of this notification in the Official Gazette to 31 March, 2001.

[Fo No. 1(2)/98-AC]

S. K. THAKUR, Under Secy.

(राजस्व विभाग)

केन्द्रीय प्रत्यक्ष कर बोर्ड

नई दिल्ली, 11 जून, 1998

का.आ. 1194.—सर्वसाधारण की जानकारी के लिए यह अधिसूचित किया जाता है कि केन्द्रीय सरकार द्वारा

मैसर्स हाउसिंग एण्ड डेवलपमेंट कर्पो. लि. हुडको भवन; इण्डिया हैबिटेड सेन्टर, लोधी रोड, नई दिल्ली-3 को कर-निर्धारण वर्ष 1998-99 से 1999-2000 के लिए आयकर अधिनियम, 1961 की धारा 36(1) (viii) के प्रयोजनार्थ अनुमोदित किया जाता है।

यह अनुमोदन इस शर्त पर किया जाता है कि यह कम्पनी आयकर अधिनियम, 1961 की धारा 36(1) (viii) के उपबन्धों के अनुरूप होगी और उनका अनुपालन करेगी।

[अधिसूचना सं. 10628/फा.सं. 204/11/97-आयकर नि.-II]

मालथी आर. श्रीधरन, अवर सचिव

(Department of Revenue)

CENTRAL BOARD OF DIRECT TAXES.

New Delhi, the 11th June, 1998.

S.O. 1194.—It is notified for general information that M/s. Housing and Urban Development Corporation Ltd., Hudco Bhawan, India Habitat Centre, Lodhi Road, New Delhi-3, has been approved by the Central Government for the purposes of Section 36 (1) (viii) of the Income Tax Act, 1961, for the assessment years, 1989-99 and 1999-2000.

The approval is subject to the condition that the company will conform to and comply with the provisions of Section 36(1) (viii) of the Income-tax Act, 1961.

[Notification No. 10628/F. No. 204/11/97-ITA-II]

MALATHI R. SRIDHARAN, Under Secy.

नई दिल्ली, 11 जून, 1998

का.आ. 1195.—सर्वसाधारण की जानकारी के लिए यह अधिसूचित किया जाता है कि केन्द्रीय सरकार द्वारा मैसर्स तमिलनाडु पावर फाइनेंस एण्ड इन्फ्रास्ट्रक्चर डेवलपमेंट कारपोरेशन, लि. 84 टी.टी.के. रोड, अलवरपेट; चेन्नई-18 को कर निर्धारण वर्ष 1998-99 और 1999-2000 के लिये आयकर अधिनियम, 1961 की धारा 36(1) (viii) के प्रयोजनार्थ अनुमोदित किया जाता है।

यह अनुमोदन इस शर्त पर किया जाता है कि यह कम्पनी आयकर अधिनियम, 1961 की धारा 36(1) (viii) के उपबन्धों के अनुरूप होगी और उनका अनुपालन करेगी।

[अधिसूचना सं. 10627/फा.सं. 204/15/96-आयकर नि-II]

मालथी आर. श्रीधरन, अवर सचिव

New Delhi, the 11th June, 1998.

S.O. 1195.—It is notified for general information that M/s. Tamilnadu power Finance and infrastructure Development Corporation, Ltd., 84-T. T. K. Road,

Alwar-pet Chennai-18 has been approved by the Central Government for the purposes of Section 36 (1)(viii) of the Income-Tax Act, 1961, for the assessment years 1998-99 and 1999-2000.

The approval is subject to the condition that the company will conform to and comply with the provisions of Section 36(1)(viii) of the Income-tax Act, 1961.

[Notification No. 10627/F. No. 204/15/96-ITA-III]
MALATHI R. SRIDHARAN, Under Secy.

वर्णज्य मंत्रालय

(विदेश व्यापार महानिदेशालय)

नई दिल्ली, 27 अप्रैल, 1998

का.आ. 1196.—मै. सीमन्स लि., 130 पाण्डुरंग बुडकर मार्ग, वर्ली, मुम्बई-400018 को निर्यात संवर्धन पूंजीगत माल योजना के तहत पूंजीगत माल के आयात के लिये 1,86,31,662/- (डी एम 882181) (एक करोड़ छयास्सी लाख इक्कीस हजार छः सौ बासठ रुपये) के लिये आयात लाइसेंस सं.पी/सीजी/2156021 दिनांक 27-7-95 प्रदान किया गया था।

2. फर्म ने ऊपर उल्लिखित लाइसेंस की विनिमय नियंत्रण प्रयोजन की दूसरी प्रति जारी करने के लिये इस आधार पर आवेदन किया है कि लाइसेंस की मूल विनिमय नियंत्रण प्रयोजन प्रति खो गई है/अस्थानस्थ हो गई है।

3. अपने मत के समर्थन में लाइसेंसधारी ने नोटरी पब्लिक, बम्बई के समक्ष विधिवत् शपथ लेकर स्टाम्प पेपर पर हलफनामा प्रस्तुत किया है। मैं, एतदनुसार सहमत हूँ कि आयात लाइसेंस सं. पी/सीजी/2156021 दिनांक 27-7-95 की विनिमय नियंत्रण प्रयोजन प्रति फर्म द्वारा खो गई है/अस्थानस्थ हो गई है। यथासंजोधित आयात (नियंत्रण) आदेश 1955 दिनांक 7-12-1955 की उप-धारा 9 (सीसी) के तहत प्रदत्त शक्तियों का प्रयोग करते हुए मैं, सीमन्स लि., मुम्बई को जारी की गई उक्त मूल विनिमय नियंत्रण प्रयोजन प्रतिसं. पी/सीजी/2156021 एतद्वारा निरस्त की जाती है।

4. उक्त लाइसेंस की विनिमय नियंत्रण प्रयोजन प्रति की दूसरी प्रति पार्टी को अलग से जारी की जा रही है।

[फा.सं. 18/197/ए एम 96/ई पी सी जी-III/34]

के. चन्द्रामती, उप महानिदेशक, विदेश व्यापार

MINISTRY OF COMMERCE

(Office of Directorate General of Foreign Trade)

New Delhi, the 27th April, 1998

S.O. 1196.—M/s. Siemens Ltd., 130 Pandurang Budhkar Marg, Worli, Mumbai-400018 were granted an import licence No. P/CG/2156021 dated 27-7-95 for Rs. 1,86,31,662/- (Rupees One Crore Eighty Six Lakhs Thirty One Thousand Six Hundred and Sixty Two only) (DM 882181).

2. The firm has applied for issue of duplicate copy of Exchange Control Purpose copy of the above mentioned licence on the ground that the Original Exchange Control Purpose copy of the licence has been lost or misplaced.

3. In support of their contention, the licensee has filed an Affidavit on stamped paper duly sworn in before Notary Public, Bombay. I am accordingly satisfied that the exchange control purpose copy of import licence No. P/CG/2156021 dated 27-7-95 has been lost or misplaced by the firm. In exercise of the powers conferred under Sub-clause 9(cc) of the Import (Control) Order 1955, dated 7-12-1955 as amended, the said Original Exchange Control purpose copy No. P/CG/2156021 dated 27-7-95 issued to M/s. Siemens Ltd., Mumbai is hereby cancelled.

4. The duplicate exchange control purpose copy of the said licence is being issued to the party separately.

[F. No. 18/197/AM 96/EFCEG-III/34]

K. CHANDRAMATHI, Dy. Director.
General of Foreign Trade

नई दिल्ली, 10 जून, 1998

का.आ. 1197.—मैसर्स रेमण्ड लिमिटेड (रेमण्ड स्टील का प्रभाग), प्लॉट सं. 156/मकान नं. 2, गांधी जंक्शन, रत्नगिरि, महाराष्ट्र का ई.पी.सी.जी. म्कीम के अन्तर्गत पूंजीगत माल के आयात के लिए 94,48,78,175/- (नौरानव करोड़, अड़तालीस लाख, अठहत्तर हजार, एक सौ पचहत्तर रुपए) (2,70,19,679 अमरीकी डालर) के लिए एक आयात लाइसेंस सं. 01500610 दिनांक 11-4-97 मंजूर किया गया था।

2. फर्म ने इस आधार पर उपर्युक्त लाइसेंस की सीमाशुल्क प्रयोजन की डुप्लीकेट प्रति जारी करने हेतु आवेदन किया है कि लाइसेंस की सीमाशुल्क प्रयोजन प्रति खो गई

है अथवा अस्थानस्थ हो गई है। आगे यह भी कहा गया है कि लाइसेंस की सीमाशुल्क प्रयोजन प्रति को सीमाशुल्क सदन, बम्बई के पारू पंजीकृत किया गया था और 73,26,55,647/- रुपये की राशि का उपयोग कर लिया गया है और 21,22,22,528/- रुपये की बकाया राशि को उपयोग में नहीं लाया जा सका है।

3. अपने कथन के समर्थन में लाइसेंसधारी ने नोटरी पब्लिक, महाराष्ट्र के समक्ष शपथ लेकर स्टैम्प पेपर पर एक शपथ-पत्र दाखिल किया है, तदनुसार मैं सन्तुष्ट हूँ कि फर्म के आयात लाइसेंस संख्या 01500610/1/13/10/1/01 दिनांक 11-4-97 की सीमाशुल्क प्रयोजन प्रति गुम हो गई है अथवा अस्थानस्थ हो गई है। यथा संशोधित आयात (नियंत्रण) आदेश 1955, दिनांक 7-12-1955 की उपधारा 9 (सी०सी०) के तहत प्रदत्त शक्तियों का प्रयोग करते हुए, सीमर्स रेमण्ड लिमिटेड (रेमण्ड स्टील का प्रभाग) को जारी उक्त मूल सीमाशुल्क प्रयोजन प्रति संख्या 01500610/1/13/10/1/01 दिनांक 11-4-97 को निरस्त किया जाता है।

4. उक्त लाइसेंस की डुप्लिकेट सीमाशुल्क प्रयोजन प्रति पार्टी को अलग से जारी की जा रही है।

[पाइल संख्या 01/36/022/33/ए.एम. 97/ई पी सी जी-3/97]

के० चन्द्रामती, उपमहानिदेशक, विदेश व्यापार

New Delhi, the 10th June, 1998

S.O. 1197.—M/s. Raymond Limited (Div. of Raymond Steel) Plot No. 156/H. No. 2, Vill. Zadgoan, Ratnagiri, Maharashtra were granted an import licence No. 01500610/1/13/10/101 dated 11-4-97 for Rs. 94,48,78,175 (Rupees Ninety-four Crores Fourty Eight Lakhs Seventy Eight Thousand One Hundred and Seventy Five only) (US \$ 2,70,19,679) for import of capital goods under EPCG Scheme.

2. The firm has applied for issue of duplicate copy of Customs Purpose of above mentioned licence on the ground that the Original Customs Purpose copy of the licence has been lost or misplaced. It has further been stated that the Customs Purpose copy of the licence was registered with Bombay Customs House and has been utilised for a sum of Rs. 73,26,55,647 leaving an unutilised balance of Rs. 21,22,22,528.

3. In support of their contention, the licensee has filed an Affidavit on stamped paper duly sworn in before Notary Public, Maharashtra. I am accordingly satisfied that the Customs Purpose copy of import licence No. 01500610/1/13/10/101 dated 11-4-97 has been lost or misplaced by the firm. In exercise of the powers conferred under Sub-clause 9(cc) of the Import (Control) Order 1955 dated 7-12-1955 as amended, the said Original Customs Purposes copy No. 01500610/1/13/10/101 dated 11-4-97 issued to M/s. Raymond Ltd. (Div. of Raymond Steel) is hereby cancelled.

4. The duplicate Customs Purpose copy of the said licence is being issued to the party separately.

[F. No. 01/36/022/33/AMG97/EPCG-III/97]

K. CHANDRAMATHI, Dy. Director
General of Foreign Trade

कोयला मंत्रालय

शुद्धि पत्र

नई दिल्ली, 2 जून, 1998

का.ग्रा. 1198.—भारत के राजपत्र तारीख 16 अगस्त, 1997 के भाग-2, खण्ड-3, उपखण्ड (i) में पृष्ठ क्रमांक 3824 से 3825 पर प्रकाशित भारत सरकार, कोयला मंत्रालय की अधिसूचना का.ग्रा. सं. 1996 तारीख 4 अगस्त, 1997 में—

पृष्ठ क्रमांक 3824 पर—

1. अनुसूची में “नगलों” के स्थान पर “नागलों” पढ़िए और जहाँ कहीं यह शब्द प्रयुक्त हुआ हो उस स्थान पर “नागलों” पढ़िए और “मजरी क्षेत्र” के स्थान पर “माजरी क्षेत्र” पढ़िए।

[का.सं. 43015/8/97—एल. डब्ल्यू./पी.भार.आई. डब्ल्यू.]
जे. एल. मीणा, निदेशक

शुद्धि पत्र

नई दिल्ली, 2 जून, 1998

का.ग्रा. 1199.—भारत के राजपत्र तारीख 20 सितम्बर, 1997 के भाग-2, खण्ड-3, उपखण्ड (ii) में पृष्ठ क्रमांक 4424 से 4426 पर प्रकाशित भारत सरकार कोयला मंत्रालय की अधिसूचना सं. का.ग्रा. 2300 तारीख 9 सितम्बर, 1997 में—

पृष्ठ क्रमांक 4424 पर—

अधिसूचना में—

1. परिच्छेद 2 में “(1957 का 30)” के स्थान पर “(1957 का 20)” पढ़िए।

अनुसूची में—

2. क्रम संख्या 1 में ग्राम/वन का नाम स्तंभ में “बारबत” के स्थान पर “बरबट” पढ़िए और जहाँ कहीं भी यह शब्द प्रयुक्त हुआ हो वहाँ “बरबट” पढ़िए।

3. क्रम संख्या “4, 5, 6” के स्थान पर क्रम संख्या “4” पढ़िए।

4. क्रम संख्या 4 में कम्पार्टमेंट सं. स्तंभ में “348” के स्थान पर “388” पढ़िए।

5. क्रम संख्या 4 में क्षेत्र हैक्टर में स्तंभ में “42.27” के स्थान पर “42.65” पढ़िए।

पृष्ठ क्रमांक 4425 पर—

सीमा वर्णन में रेखा ड-क में “ग्राम मसाला की बाहरी सीमा” के स्थान पर ग्राम मसाला तुकुम की बाहरी सीमा” पढ़िए।

[का.सं. 43015/11/97—एल. डब्ल्यू./पी.भार.आई. डब्ल्यू.]
जे. एल. मीणा, निदेशक

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 5 मई, 1998

नई दिल्ली, 5 मई, 1998

का०आ० 1200.—तेल उद्योग (विकास) अधिनियम, 1974 (1974 का 47) की धारा 3 की उपधारा (3) के खण्ड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा श्री एम० वेंकटेश्वरन अय्यर, अपर सचिव (व्यय), व्यय विभाग, नई दिल्ली को तत्काल प्रभाव से तथा दो वर्ष से अनधिक अवधि के लिए अथवा अगले आदेशों तक, तेल उद्योग विकास बोर्ड के सदस्य के रूप में नियुक्त करती है।

[संख्या जी-35012/2/91-वित्त-II]

मोहित सिन्हा, उप सचिव (वित्त)

MINISTRY OF PETROLEUM AND
NATURAL GAS

New Delhi, the 5th May, 1998

S.O. 1200.—In exercise of the powers conferred by clause (b) of sub-section (3) of Section 3 of the Oil Industry (Development) Act, 1974 (14 of 1974) the Central Government hereby appoints, with immediate effect and for a period not exceeding two years Shri M. Venkateswaran Iyer, Additional Secretary, (Expenditure), Department of Expenditure, New Delhi, as a Member of the Oil Industry Development Board, or until further orders.

[No. G-35012/2/91-Fin. II]

MOHIT SINHA, Dy. Secy. (Fin.)

का०आ० 1201.—तेल उद्योग (विकास) अधिनियम, 1974 (1974 का 47) की धारा 3 की उपधारा (3) के खण्ड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा श्री श्याम सुन्दर, अध्यक्ष एवं प्रबन्ध निदेशक, मद्रास रिफाइनरीज लिमिटेड, मद्रास को तत्काल प्रभाव से तथा दो वर्ष से अनधिक अवधि के लिए अथवा अगले आदेशों तक, तेल उद्योग विकास बोर्ड के सदस्य के रूप में नियुक्त करती है।

[संख्या जी-35012/2/91-वित्त-II]

मोहित सिन्हा, उप सचिव (वित्त)

New Delhi, the 5th May, 1998

S.O. 1201.—In exercise of the powers conferred by clause (c) of sub-section (3) of Section 3 of the Oil Industry (Development) Act, 1974 (47 of 1974), the Central Government hereby appoints, with immediate effect and for a period not exceeding two years, Shri Shyam Sunder, Chairman and Managing Director, Madras Refineries Limited, Madras, as a Member of the Oil Industry Development Board, or until further orders.

[No. G-35012/2/91-Fin. III]

MOHIT SINHA, Dy. Secy (Fin.)

खाद्य और उपभोक्ता मामले मंत्रालय

भारतीय मानक ब्यूरो

नई दिल्ली, 2 जून, 1998

का.प्र. 1202.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड 'ख' के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि नीचे दिये गए मानक (कों) में संशोधन किया गया है/किये गये हैं।

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक की संख्या और वर्ष	संशोधन की संख्या और तिथि	संशोधन लागू होने की तारीख
(1)	(2)	(3)	(4)
1.	आईएस 101 (भाग 5/अनु. 2) : 1988	संशोधन सं. 1 जनवरी 1998	98-01-31
2.	आईएस 101 (भाग 8/अनु. 2) : 1990	संशोधन सं. 1 फरवरी 1998	98-02-28

(1)	(2)	(3)	(4)
3. आई एस 309 : 1992	संशोधन सं. 1 जनवरी 1998	98-01-31	
4. आई एस 325 : 1996	संशोधन सं. 1 फरवरी 1998	98-02-28	
5. आई एस 567 : 1993	संशोधन सं. 1 जनवरी 1998	98-01-31	
6. आई एस 715 (भाग 1) : 1976	संशोधन सं. 3 फरवरी 1998	98-02-28	
7. आई एस 863 : 1988	संशोधन सं. 2 मार्च 1998	98-03-31	
8. आई एस 877 : 1989	संशोधन सं. 1 जनवरी 1998	98-01-31	
9. आई एस 1448 (भाग 34) : 1979	संशोधन सं. 1 जनवरी 1998	98-01-31	
10. आई एस 1514 : 1990	संशोधन सं. 1 जनवरी 1998	98-01-31	
11. आई एस 1776 : 1989	संशोधन सं. 1 जनवरी 1998	98-01-31	
12. आई एस 1799 : 1981	संशोधन सं. 2 जनवरी 1998	98-01-31	
13. आई एस 2432 : 1993	संशोधन सं. 1 फरवरी 1998	98-02-28	
14. आई एस 2519 : 1983	संशोधन सं. 2 फरवरी 1998	98-02-28	
15. आई एस 2617 : 1967	संशोधन सं. 5 जनवरी 1998	98-01-31	
16. आई एस 2730 : 1977	संशोधन सं. 1 जनवरी 1998	98-01-31	
17. आई एस 2771 (भाग 2) : 1975	संशोधन सं. 1 फरवरी 1998	98-02-28	
18. आई एस 2883 : 1985	संशोधन सं. 1 फरवरी 1998	98-02-28	
19. आई एस 3263 : 1981	संशोधन सं. 1 जनवरी 1998	98-01-31	
20. आई एस 3962 : 1967	संशोधन सं. 2 जनवरी 1998	98-01-31	

(1)	(2)	(3)	(4)
21. आई एस 3976 : 1995		संशोधन सं. 1 दिसम्बर 1997	97-12-30
22. आई एस 5012 : 1987		संशोधन सं. 1 फरवरी 1998	98-02-28
23. आई एस 5199 : 1985		संशोधन सं. 1 जनवरी 1998	98-01-31
24. आई एस 6615 : 1972		संशोधन सं. 1 जनवरी 1998	98-01-31
25. आई एस 7151 : 1991		संशोधन सं. 2 जनवरी 1998	98-01-31
26. आई एस 7601 : 1983		संशोधन सं. 1 जनवरी 1998	98-01-31
27. आई एस 8329 : 1994		संशोधन सं. 2 फरवरी 1998	98-02-28
28. आई एस 9113 : 1993		संशोधन सं. 2 जनवरी 1998	98-01-31
29. 9301 : 1990		संशोधन सं. 5 मार्च 1998	98-03-31
30. आई एस 9588 : 1990		संशोधन सं. 1 जनवरी 1998	98-01-31
31. आई एस 9875 : 1990		संशोधन सं. 1 फरवरी 1998	98-02-28
32. आई एस 9988 : 1981		संशोधन सं. 1 जनवरी 1998	98-01-31
33. आई एस 12180 : 1987		संशोधन सं. 1 जनवरी 1998	98-01-31
34. आई एस 12490 : 1988		संशोधन सं. 1 जनवरी 1998	98-01-31
35. आई एस 12999 : 1990		संशोधन सं. 1 जनवरी 1998	98-01-31
36. आई एस 14106 : 1996		संशोधन सं. 1 नवम्बर 1997	97-11-30
37. आई एस 14354 : 1996		संशोधन सं. 1 फरवरी 1998	98-02-28

इन संशोधनों की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुरशाह जफर मार्ग, नई दिल्ली 110002 और क्षेत्रीय कार्यालयों नई दिल्ली, कलकत्ता, चंडीगढ़, भद्रास तथा मुम्बई एवं शाखा कार्यालयों ग्रहमवाबाद बंगलौर, भोपाल, भुवनेश्वर, कोयंबटूर, फरीदाबाद, गाजियाबाद, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, लखनऊ, पटना तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संख्या के प्र वि/13 : 5]

बी. मुखर्जी, अपर महानिदेशक

MINISTRY OF FOOD & CONSUMER AFFAIRS

BUREAU OF INDIAN STANDARDS

New Delhi, the 2nd June, 1998

S.O. 1202.—In pursuance of clause (b) of Sub-rule (1) of Rule (1) of Rule 7 of the Bureau of Indian Standards Rules 1987, the Bureau of Indian Standards hereby notifies that amendment(s) to the Indian Standard(s), particulars of which is/are given in the Schedule hereto annexed, has/have been issued :

SCHEDULE

Sl. No. and year of the Indian Standard(s) amended	No. and year of the amendment	Date from which the amendment shall have effect
(1)	(2)	(3)
(4)		
1. IS 101 (Part 5/Sec 2) : 1988	Amendment No. 1 January 1998	98-01-31
2. IS 101 /Part 8/Sec 2) : 1990	Amendment No. 1 February 1998	98-02-28
3. IS 309 : 1992	Amendment No. 1 January 1998	98-01-31
4. IS 325 : 1996	Amendment No. 1 February 1991	98-02-28
5. IS 567 : 1993	Amendment No. 1 January 1998	98-01-31
6. IS 715 (Part 1) : 1976	Amendment No. 3 February 1998	98-02-28
7. IS 863 : 1988	Amendment No. 2 March 1998	98-03-31

1	2	3	4
8.	IS 877 : 1989	Amendment No. 1 January 1998	98-01-31
9.	IS 1448 [P : 34]-1979	Amendment No. 1 January 1998	98-01-31
10.	IS 1514 : 1990	Amendment No. 1 January 1998	98-01-31
11.	IS 1776 : 1989	Amendment No. 1 January 1998	98-01-31
12.	IS 1799 : 1981	Amendment No. 2 January 1998	98-01-31
13.	IS 2432 : 1993	Amendment No. 1 February 1998	98-02-28
14.	IS 2519 : 1983	Amendment No. 2 February 1998	98-02-28
15.	IS 2617 : 1967	Amendment No. 5 January 1998	98-01-31
16.	IS 2730 : 1977	Amendment No. 1 January 1998	98-01-31
17.	IS 2771 (Part 2) : 1975	Amendment No. 1 February 1998	98-02-28
18.	IS 2883 : 1985	Amendment No. 1 February 1998	98-02-28
19.	IS 3263 : 1981	Amendment No. 1 January 1998	98-01-31
20.	IS 3962 : 1967	Amendment No. 2 January 1998	98-01-31
21.	IS 3976 : 1995	Amendment No. 1 December 1997	97-12-31
22.	IS 5012 : 1987	Amendment No. 1 February 1998	98-02-28
23.	IS 5199 : 1985	Amendment No. 1 January 1998	98-01-31

1	2	3	4
24.	IS 6615 : 1972	Amendment No. 1 January 1998	98-01-31
25.	IS 7151 - 1991	Amendment No. 2 January 1998	98-01-31
26.	IS 7601 : 1983	Amendment No. 1 January 1998	98-01-31
27.	IS 8329 : 1994	Amendment No. 2 February 1998	98-02-28
28.	IS 9113 : 1993	Amendment No. 2 January 1998	98-01-31
29.	IS 9301 : 1990	Amendment No. 5 March 1998	98-03-31
30.	IS 9588 : 1990	Amendment No. 1 January 1998	98-01-31
31.	IS 9875 : 1990	Amendment No. 1 February 1998	98-02-28
32.	IS 9988 : 1981	Amendment No. 1 January 1998	98-01-31
33.	IS 12180 : 1987	Amendment No. 1 January 1998	98-01-31
34.	IS 12490 : 1988	Amendment No. January 1998	98-01-31
35.	IS 12999 : 1990	Amendment No. 1 January 1998	98-01-31
36.	IS 14106 : 1996	Amendment No. 1 November 1997	98-11-30
37.	IS 14354 : 1996	Amendment No. 1 February 1998	98-02-28

Copies of these amendments are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi—110002 and Regional Offices : New Delhi, Calcutta, Chandigarh, Madras, and Mumbai and also Branch Offices : Ahmedabad, Bangalore Bhopal, Bhubaneswar, Coimbatore, Faridabad, Ghaziabad, Guwahati, Hyderabad, Jaipur, Kanpur, Lucknow, Patna, and Thiruvananthapuram.

[No. CMD/13 : 5]

B. MUKHERJI, Addl. Director General

खाद्य और उपभोक्ता मामले मंत्रालय

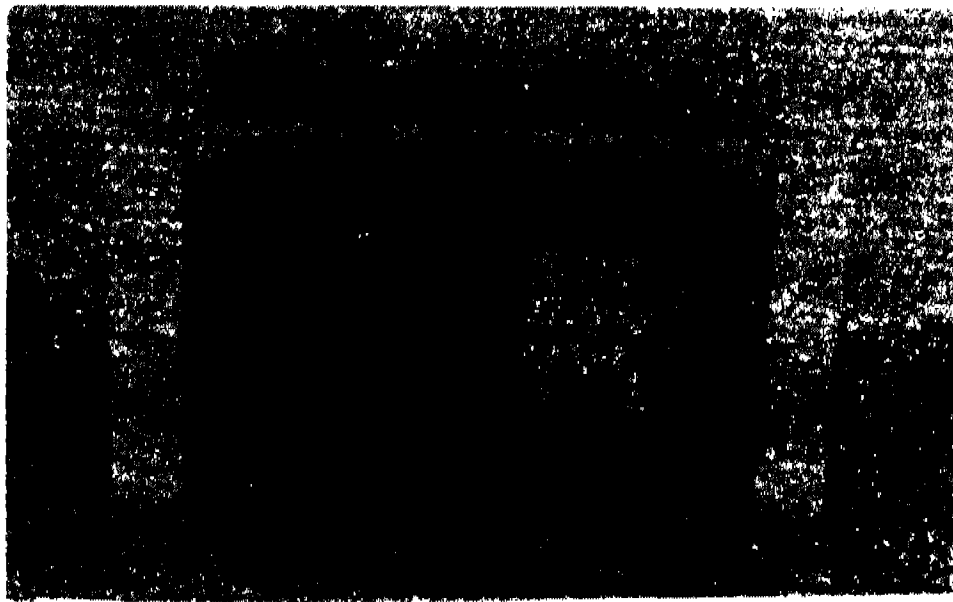
(उपभोक्ता मामले विभाग)

नई दिल्ली, 1 जून, 1998

का. आ. 1203.—केन्द्रीय सरकार का विहित प्राधिकारी द्वारा उसे प्रस्तुत की गई रिपोर्ट पर विचार करने के पश्चात् समाधान हो गया है कि उक्त रिपोर्ट में वर्णित माडल (नीचे दी गई आकृति देखिए) बाट और माप मानक अधिनियम, 1976 (1976 का 60) और बाट और माप मानक (माडल का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि वह लगातार प्रयोग की अवधि में यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा देता रहेगा;

अतः केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, "इलेक्ट्रॉनिक डेयर" ब्रांड नाम वाली एम ई कम्पेक्ट सिरीज के स्वचालित तौलन और पैकिंग मशीन के माडल का (जिसे इसमें पश्चात् माडल कहा गया है) जिसका विनिर्माण मैसर्स ई ई इंडिया लिमिटेड, 509-510 उद्योग विहार फेज III, गुडगांव-122016 द्वारा किया गया है और जिसे अनुमोदन बिहू एन.डी./09/97/72 समनुदेशित किया गया है, अनुमोदन प्रमाणपत्र प्रकाशित करती है।

माडल (आकृति) एक अंकीय संप्रदर्श वाली इलेक्ट्रॉनिक्स के सिद्धांत पर कार्यकरणावाली एफ़ मशीन है जिसके साथ विकृति मापी टाइप लोड सेल लगा हुआ है। यह मशीन तीन स्थिति सिलेंडरों से मिल कर बनने वाले तीन स्थिति द्वारा से जा स्थूल और परिष्कृत भरण तथा विराम उपदर्शित करते हैं किसी सामग्री की पूर्व निर्धारित मात्रा का वजन स्वचालित रूप से करती है। कपाट विद्युत संचालित वालीय सोलोनोड वाल्व की सहायता से प्रचालित होते हैं। मशीन 1 कि.ग्रा. से 100 कि.ग्रा. तक किसी मात्रा के परिदत्त करने के लिए समायोजित की जा सकती है। मशीन की उत्पादन रेंज 300 पाउण्डों से 3600 पाउण्ड प्रति घंटा होगी जो प्रयोगशाला से प्राप्त परीक्षण रिपोर्ट के आधार पर निर्भर करते हुए होगी जिसके लिए उक्त माडल के अनुमोदन की सिफारिश की जा रही है।



[फा० सं० डब्ल्यू एम 21/11/91]

राजीव श्रीवास्तव, अपर सचिव

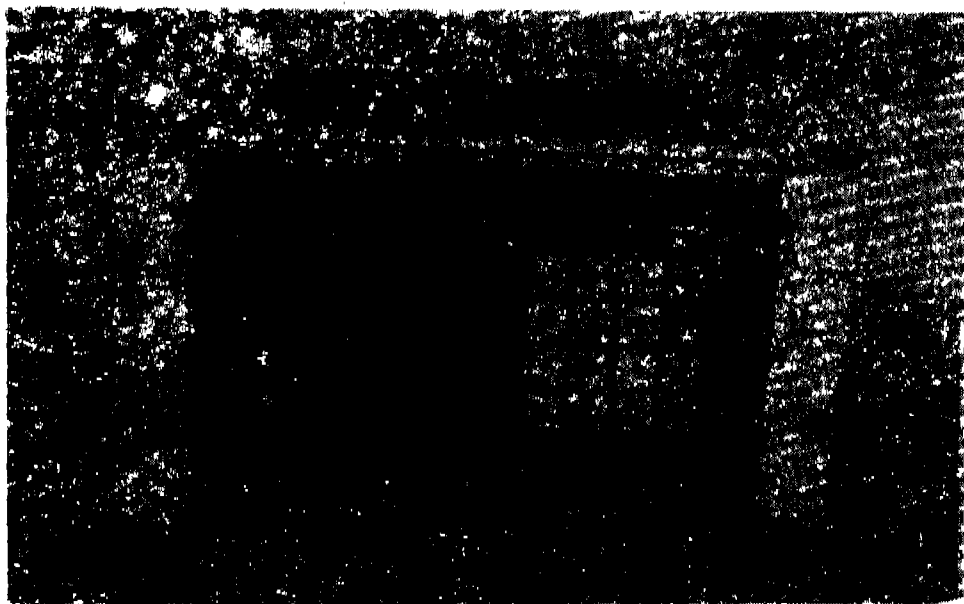
MINISTRY OF FOOD AND CONSUMER AFFAIRS**(Department of Consumer Affairs)**

New Delhi, the 1st June, 1998

S.O. 1203.—Whereas, the Central Government after considering the report submitted to it by the prescribed authority, is satisfied that the Model described in the said report (figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said Model is likely to maintain accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-section (7) of section 36 of the said Act, the Central Government hereby publishes the certificate of approval of the Model of the automatic weighing and packing machine of ME Compact series with brand name "Electronic Weigher", (hereinafter referred to as the model) manufactured by M/s E E L India Limited, 509-510 Udyog Vihar Phase III, Gurgaon-122016, and which is assigned the approval mark IND/09/97/72;

The Model (figure) is an automatic weighing machine incorporated with strain gauge type load cell working on the principle of electronics with digital display. The machine weighs a pre-set amount of material automatically with three position gate consisting of three position cylinders in which coarse and fine feed and stop are indicated. The shutters are operated with the help of electrically operated pneumatic solenoid valves. The machine can be adjusted to deliver any quantity; from 1kg to 100kg. The machine output ranges from 300 pouches to 3600 pouches per hour, depending on the material, its bulk density of the material and the type of commodity. The machine is designed for filling Cement, PVC Resins, talcum powder, carbon black, fertilisers, sugar, chemicals etc. The machine works on three phase alternate current electrical power supply at 220 volts at 50 Hertz frequency.



[File No WM 21/11/91]

RAJIV SRIVASTAVA, Addl. Secy.

संस्कृति विभाग

भारतीय पुरातत्व सर्वेक्षण

नई दिल्ली, 9 जून, 1998

क्रा.आ 1204.—केन्द्रीय सरकार ने, प्राचीन संस्मारक तथा पुरातत्वीय स्थल और अवशेष अधिनियम, 1958 (1958 का 24) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उपधारा (1) की अपेक्षानुसार भारत सरकार के संस्कृति विभाग (भारतीय पुरातत्व सर्वेक्षण) की अधिसूचना सं.क्रा. आ. 2741 तारीख 16 सितम्बर, 1996 द्वारा जो भारत के राजपत्र, भाग 2, खण्ड 3, उपखंड (ii) तारीख 28 सितम्बर, 1996 में प्रकाशित की गई थी, इससे संलग्न अनुसूची में, विनिर्दिष्ट प्राचीन संस्मारक को राष्ट्रीय महत्व का घोषित करने के अपने आशय की दो मास की सूचना की थी और उस अधिसूचना की एक प्रति उक्त संस्मारक के समीप सहज दृश्य स्थान पर लगा दी गई थी,

और उक्त राजपत्र 28 सितम्बर, 1996 (अट्ठाईस सितम्बर उन्नीस सौ छियासठ) को जनता को उपलब्ध करा दिया गया था;

और केन्द्रीय सरकार को एक व्यक्ति से आक्षेप प्राप्त हुआ था और केन्द्रीय सरकार ने उस पर सम्यक रूप से विचार कर लिया है।

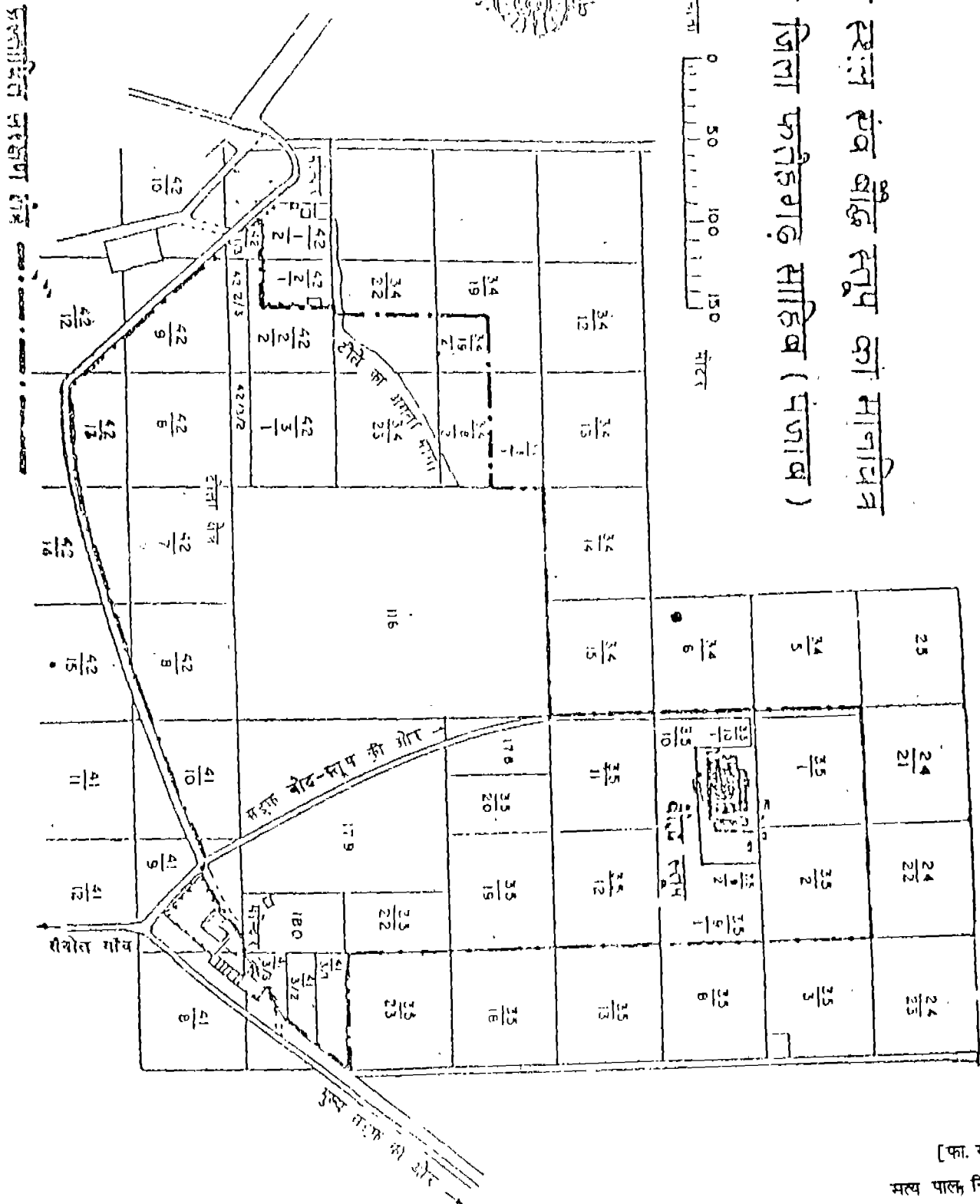
अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 4 की उपधारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए इससे उपाध्व अनुसूची में विनिर्दिष्ट उक्त प्राचीन संस्मारक को राष्ट्रीय महत्व का होना घोषित करती है।

अनुसूची

राज्य	जिला	तहसील	स्थान	स्मारक/स्थल का नाम	संरक्षण के अधीन सम्मिलित किए जाने वाले राजस्व प्लॉट नं०	क्षेत्र कनाल मरला	स्वामित्व	सीमाएं
1	2	3	4	5	6	7	8	9
पंजाब	फतेहगढ़ साहिब	खमानु	संचोल (ऊँचा पिंड)	प्राचीन स्थल और बौद्ध स्तूप	खसरा नं० 34/18/2 (भाग) खसरा नं० 34/19/4 भाग खसरा नं० 34/22 भाग खसरा नं० 34/23 भाग खसरा नं० 35/1 भाग खसरा नं० 35/2 भाग खसरा नं० 35/9/2 भाग खसरा नं० 35/9/1 भाग खसरा नं० 35/10/1 भाग खसरा नं० 35/10/2 भाग खसरा नं० 35/11 भाग खसरा नं० 35/12 खसरा नं० 35/19 खसरा नं० 35/20 भाग	4.00 2.00 4.01 8.01 7.12 8.00 1.09 6.11 2.16 4.14 7.12 8.00 8.00 4.00	ग्राम पंचायत उत्तर : खसरा नं. 24/18/1 ग्राम पंचायत भाग 34/19, 34/14, 34/15 ग्राम पंचायत 24/21, 24/22, 35/23, ग्राम पंचायत 42/1/2, 42/2/1 (भाग) ठाकुर द्वार ठाकुर द्वार ठाकुर द्वार पूर्व 34/3, 35/8, 35/13, ठाकुर द्वार 35/18, 35/23 और रोड ठाकुर द्वार ठाकुर द्वार दक्षिण : 41/9 (भाग), ठाकुर द्वार 41/10 (भाग) 42/6 ठाकुर द्वार (भाग), 42/15, 42/14 ठाकुर द्वार (भाग) 42/13 (भाग) 42/12 ठाकुर द्वार (भाग), 42/9, 42/10 लिंक रोड	

1	2	3	4	5	6	7	8	9
					खसरा नं० 35/22 भाग	4.00	ठाकुर द्वार	
					खसरा नं० 41/3/1 भाग	2.02	ठाकुर द्वार	पश्चिम : 34/5, 34/6,
					खसरा नं० 41/3/2 भाग	1.08	पंचायत	34/15, 34/18/1 (भाग)
					खसरा नं० 41/3/3 भाग	1.00	पंचायत	34/19 (भाग) 34/22 (भाग)
					खसरा नं० 41/9 भाग	1.10	पंचायत	42/2/1 (भाग)
					खसरा नं० 41/10 भाग	4.14	पंचायत	
					खसरा नं० 42/1/3 भाग	0.13	पंचायत	
					खसरा नं० 42/2/2 (भाग)	4.04	पंचायत	
					खसरा नं० 42/2/3 (भाग)	1.16	पंचायत	
					खसरा नं० 42/3/1 (भाग)	6.04	पंचायत	
					खसरा नं० 42/3/2 (भाग)	1.16	पंचायत	
					खसरा नं० 42/6 भाग	5.11	पंचायत	
					खसरा नं० 42/7 भाग	5.16	पंचायत	
					खसरा नं० 42/8	8.00	पंचायत	
					खसरा नं० 42/9 भाग	5.14	पंचायत	
					खसरा नं० 42/10 भाग	0.01	पंचायत	
					खसरा नं० 42/12 भाग	0.07	पंचायत	
					खसरा नं० 42/13 भाग	3.15	पंचायत	
					खसरा नं० 42/14 भाग	2.10	पंचायत	
					खसरा नं० 42/15 भाग	0.10	पंचायत	
					खसरा नं० 116	52.09	पंचायत	
					खसरा नं० 178	4.00	पंचायत	
					खसरा नं० 179	23.04	पंचायत	
					खसरा नं० 180	4.00	पंचायत	
						221	19 कगाल या 26 65 एकड़	

[भाग II—खंड 3 (ii)]

[illegible]

DEPARTMENT OF CULTURE

ARCHAEOLOGICAL SURVEY OF INDIA

New Delhi, the 9th June, 1998

S.O. 1204.—Whereas by notification of the Government of India in the Department of Culture (Archaeological Survey of India) No. S.O. 2741, dated the 16th September, 1996, published in Part II, Section 3, Sub-section (ii) of the Gazette of India dated the 28th September, 1996, the Central Government gave two months notice of its intention to declare the ancient monument specified in the Schedule appended thereto to be of national importance and a copy of the notification was affixed in a conspicuous place near the said monument as required by sub-section (1) of section 4 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958) herein after referred to as said Act.

And whereas the said Gazette was made available to the public on 28th September, 1996 (Twenty Eight September Nineteen hundred and ninety six).

And whereas an objection from a person was received and the same has been duly considered by the Central Government ;

Now, therefore, in exercise of the powers conferred by sub-section (3) of section 4 of the said Act, the Central Government hereby declares the said ancient monument specified in the Schedule annexed hereto to be of national importance.

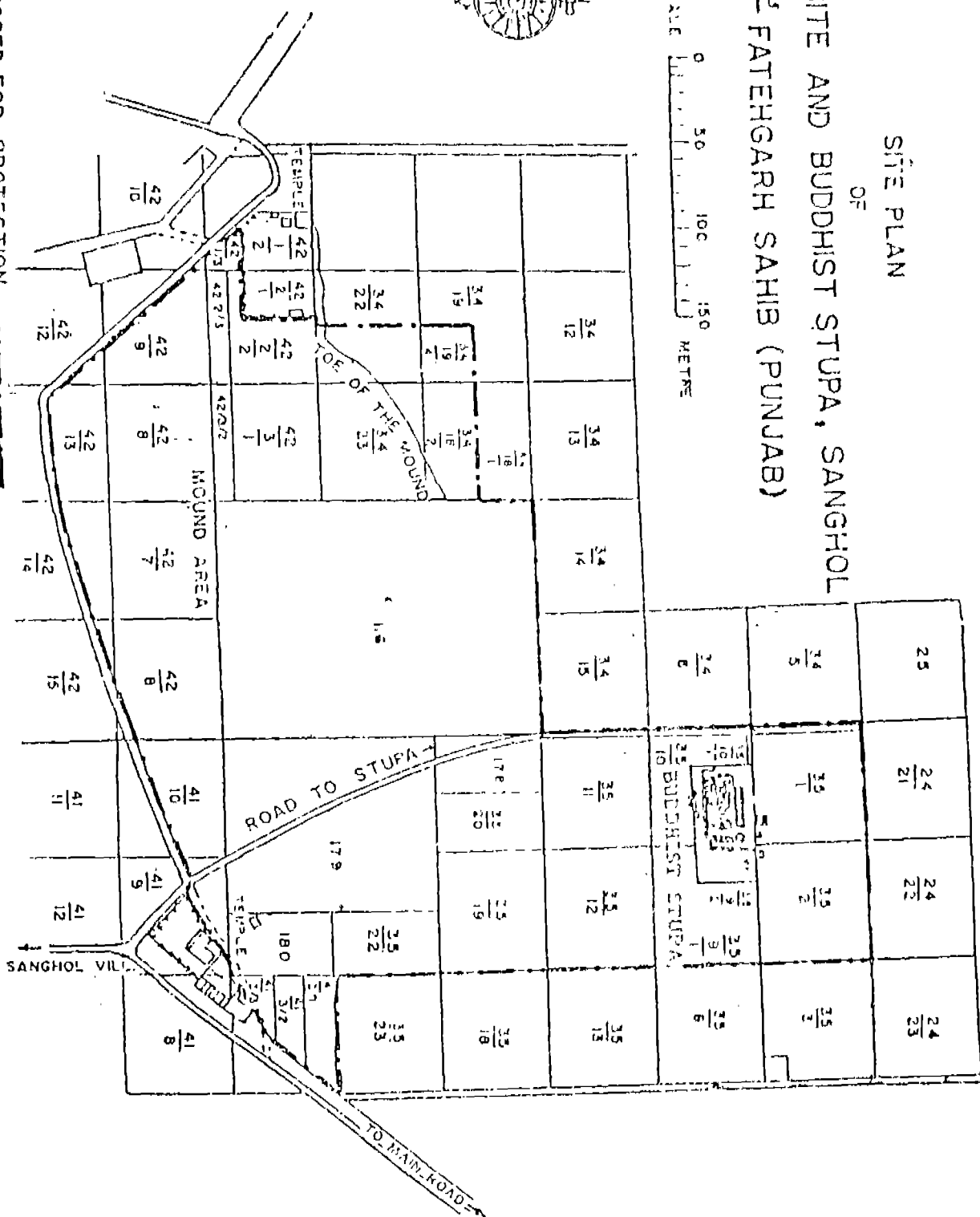
SCHEDULE

State	District	Tehsil	Locality	Name of Monument/ Site	Revenue plot numbers to be included under protection	Area Kanal	Ownership Merla	Boundaries
1	2	3	4	5	6	7	8	9
Uttar Pradesh	Bijnor	Khamano	Sanghol	Ancient	Khasra Number 34/18/2 Part	4.00	Gram Panchayat	North :-Khasra No.
	Sahib		(Uchha Pind)	Site and	Khasra Number 34/19/4 Part	2.00	-do-	24/18/1 Part 34/19,
				Buddhist	Khasra Number 34/22 Part	4.01	-do-	34/14, 34/15, 24/21
				Stupa	Khasra Number 34/23	8.00	-do-	24/22, 35/23, 42/1/2,
					Khasra Number 35/1 Part	7.12	Thakur Dwara	42/2/1 (Part)
					Khasra Number 35/2	8.00	-do-	
					Khasra Number 35/9/2 Part	1.09	-do-	
					Khasra Number 35/9/1 Part	6.11	-do-	East :-34/3, 35/8,
					Khasra Number 35/10/1 Part	2.16	-do-	35/13, 35/18, 35/23
					Khasra Number 35/10/2 Part	4.14	-do-	and road
					Khasra Number 35/11 Part	7.12	-do-	
					Khasra Number 35/12	8.00	-do-	
					Khasra Number 35/19	8.00	-do-	South :-41/9 (Part),
					Khasra Number 35/20 Part	4.00	-do-	41/10 (Part)
					Khasra Number 35/22 Part	4.00	-do-	42/6 (Part), 42/15,

1	2	3	4	5	6	7	8	9
					Khasra Number 41/3/1 Part	2.02	-do-	42/14 (Part)
					Khasra Number 41/3/2 Part	1.08	Panchyat	42/13 (Part)
					Khasra Number 41/3/3 Part	1.00	-do-	42/12 (Part), 42/9,
					Khasra Number 41/9 Part	1.10	-do-	42/10 and link road
					Khasra Number 41/10 Part	4.14	-do-	
					Khasra Number 42/1/3 Part	0.13	-do-	
					Khasra Number 42/2/2 Part	4.04	-do-	West :-34/5, 34/6,
					Khasra Number 42/2/3 Part	1.16	-do-	34/15 , 34/18/1(Part),
					Khasra Number 42/3/1 Part	6.04	-do-	34/19 (Part)
					Khasra Number 42/3/2 Part	1.16	-do-	34/22 (Part),
					Khasra Number 42/6 Part	5.11	-do-	42/2/1 (Part)
					Khasra Number 42/7 Part	5.16	-do-	
					Khasra Number 42/8	8.00	-do-	
					Khasra Number 42/9 Part	5.14	-do-	
					Khasra Number 42/10 Part	0.01	-do-	
					Khasra Number 42/12 Part	0.07	-do-	
					Khasra Number 42/13 Part	3.15	-do-	
					Khasra Number 42/14 Part	2.10	-do-	
					Khasra Number 42/15 Part	0.10	-do-	
					Khasra Number 116 Part	52.09	-do-	
					Khasra Number 178	4.00	-do-	
					Khasra Number 179	23.04	-do-	
					Khasra Number 180	4.00	-do-	
						221.19 Kanals or 26.65 Acres		

Site Plan OF ANCIENT SITE AND BUDDHIST STUPA, SANGHOL DIST.-FATEHGARH SAHIB (PUNJAB)

SCALE 0 50 100 150 METRE



[F. No. 2/6/85-M]

SATYA PAL, Director (Admn.)

श्रम मंत्रालय

नई दिल्ली, 20 मई, 1998

को.आ. 1205.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सर्वर्न रेलवे, केरल के प्रबन्धन के संबंध में निोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार लेबर कोर्ट, अनाकुलम के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-5-1998 को प्राप्त हुआ था।

[संख्या एन-41011/23/92-आई आर (डी यू) बी I]

पी.जे. माईकल, डैस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 20th May, 1998

S.O. 1205.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Labour Court, Ernakulam as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Southern Rly., Kerala and their workman, which was received by the Central Government on 20-5-1998.

[No. L-41011/23/92/IR(DU)B.I.]

F. J. MICHAEL, Desk Officer.

ANNEXURE

IN THE CENTRAL GOVERNMENT LABOUR COURT, ERNAKULAM

(Labour Court, Ernakulam)

Monday, the 5th day of January, 1998

PRESENT :

Shri. Varghese T. Abraham, B.A., LL.M., Presiding Officer

Industrial Dispute No. 8 of 1993 (C)

BETWEEN :

The Senior Divisional Accounts Officer, Southern Railway, Palakkad, Kerala-678 001.

And

The General Secretary, Southern Railway Labour Union, Edappally North P.O., Kochi-682 024.

REPRESENTATIONS :

Sri. P.M.M. Najeeb Khan, Advocate, United Law Chambers, SRM Road, Kochi-18.

— For Management

Sri. M. Ramachandran, Advocate, Kochi-17.

— For Union

AWARD

The Government of India as per Order No. L-41011/23/92/IR(DU) dated 20-9-1993 referred the following industrial dispute for adjudication :

1611 GI/98—4

"Whether the action of the Railway Administration in not applying the circular No. 148/75 published in the supplement No. 24/75 to fortnightly Gazette Volume 25, No. 24 of 15th December, 1975, in respect of cashiers in the office of the Divisional Accounts Officer, Palakkad and also not paying overtime allowance to them is legal and justified? If not, to what relief the said workmen are entitled?"

2. The case of the union is as follows : All the cashiers in Palakkad Division are working overtime w.e.f. 1-8-1974. They proceed on duty programme after office hours by undertaking the pay schedule given by Railway Administration. In this connection cashiers were travelling after the duty hours while at headquarters from 9.30 a.m. to 5.30 p.m. and while outside headquarters from 8 a.m. to 12 noon and from 1.00 p.m. to 5.00 p.m. They are expected to do overtime work from 14th to 17th and from 24th to 29th of every month. The management is bound by Railway Labour Tribunal award to pay the overtime allowance to the cashiers. Besides they should be provided with crew rest vans beyond their duty rosters hours. As the management had failed to in this regard, they are bound to pay overtime to all the cashiers for all these years. The management had adopted a negative approach. They are compelled to approach this court with this reference.

3. The defence : The claim is baseless and not maintainable. The present claim is regarding payment of overtime to cashiers which was earlier dealt with by the Labour Court, Calicut in C.P.(C) Nos. 66/82 to 69/82. That court probed into the merits of these cases and after elaborated evidence dismissed all the petitions. The petitioner in C.P.(C) 66/82 challenged the judgments of the Labour Court without success. The appeal was also dismissed. By a third step, joint conciliation was initiated at the instance of the very same petitioners and was held on 9-1-1992 by the Asstt. Labour Commissioner (Central), Ernakulam. As the conciliation failed, it came up for arbitration under section 10 of the I.D. Act. Without approaching this court by reference, the parties approached the Hon'ble Labour Court, Kozhikode. There is no violation of Rules. The claims relate to payment of overtime which is part of wages. The Central Administrative Tribunal has adjudicated the question and hence this court has no jurisdiction. The present claim is barred by the res judicata. The claim is stale.

4. The cashiers are travelling on fixed date in a month to make payments of salary to railway employees at specified places. No change has taken place by it with regard to the places and dates of payment for the last 25 years. The cashiers are rotated every three months to effect these payments. They are aware of their travel programmes, they can arrange for reservation. They are given free duty pass. They are at liberty to make reservation in 1st class or sleeper class or even make requisition for special accommodation in any second class coach. There is convenient train service. They are allowed by taxi or Auto Rickshaw for that they are reimbursed by the Railway. First Class or sleeper class are normally

provided for their journey. They have no work to perform to consider journey time. They are paid honorarium rate of which is revised from time to time. There is no complaint regarding non-provision of accommodation in train, non-payment of T.A., D.A. or honorarium or overtime during the claim period from 1974 to 1982. The relevant portion of the circular No. 147/75 dated 17-10-1975 is extracted in page 4 and 5 of the written statement. Cashiers were not eligible for overtime. They have raised claim only as experimental litigation. The claim is stale and hit by the "res judicata."

5. Evidence in the case consists of the testimony of MW1, WW1 and Ext. M1 to M8 and Ws. 1 to 5.

6. Heard both sides.

7. The points which emerge for consideration are :

- (1) Whether the management has compelled with or is it bound to comply Ext. W1 circular No. 140/75 of the management.
- (2) To what relief if any the workmen are entitled to get under industrial law ?
- (3) Are the workmen under the order of reference entitled to get over time allowance as prayed for ?

8. Points 1 to 3 : The entire case hinges on the question whether Ext. W1 is applicable to the present workers Clause 10(A) fixes the rostered hours the staff falling under the classification therein. Clause 10(b) of Ext. W1 runs as follows :

"In addition to the hours of work as fixed above, all Railway workers governed by the hours of Employment Regulations can be called upon to render duty beyond their rostered hours and statutory limits and on rest day applicable to them in the circumstances mentioned in and by and or an order of temporary exemption made under sections 71-C and 71-D of the Indian Railways Act, 1980 by a competent authority. Overtime Register should be maintained properly and O.T. slips should be routed through the Departmental Officer by the Senior Subordinate in charge of the Stations etc."

Clause 11(a) of the W1 is extracted below :

"11(a) For staff falling under the "Averaging Group" they will earn overtime if they work in a two weekly/weekly period beyond the following limits :—

- (i) Where no preparatory and/or complementary work inclusive of time for taking over and making over charges is involved :—

Two Weekly period : 84 hours in respect of Intensive workers;

96 hours in respect of continuous workers.

144 hours in respect of Gateman 'C' Care-takers and Saloon Attendants classified as "Essentially Intermittent".

Weekly period : 72 hours for Essentially Intermittent workers working at roadside stations and provided with residential quarters within 0.5 km. from their place of duty.

60 hours for the rest of the Essentially Intermittent workers.

- (ii) Where time is given for preparatory and/or complementary work inclusive of time for taking over-making over charges :—

Two weekly period : 90 hours in respect of Intensive workers.

102/108 hours in respect of continuous workers.

104 hours in respect of running staff who are not given a fixed roster. (For Running Staff working on fixed rosters, their hours of work will be according to their classification)

150 hours in respect of Gateman 'E' care-takers and Saloon Attendants classified as "Essentially Intermittent".

Weekly period : 75 hours for Essentially Intermittent workers working at roadside stations and provided with residential quarters within 0.5 km. from their place of duty.

60 hours + actual time allowed for preparatory and/or complementary work (either 3 hours or 4-1/2 hours a week as the case may be).

WW1 is the General Secretary of the union who represents the employees in these cases. According to him the workers are cashiers in the headquarters at Palakkad and they do overtime work. Their duty is to disburse salary to the railway employees in nine units housed in Managalore to Thirupathoor and Erode to Trichi Port. These employees proceed to reimburse salary by cash. According to him these workers are not provided crew rest van and they have to travel from 8 a.m. to 10 p.m. and for the purpose they are entitled to get overtime allowance. Ext. W2 is the copy of the order in C.P. 7/84(C), which was filed on the basis of Ext. W1. Ext. W2 was passed by the Labour Court, Kollam in C. P. 7/84(C) where 7 workers were involved. That C.P. was allowed as per Ext. W2. Ext. W2 was challenged in O.P. 7668/1985-Y. As per Ext. W3 the petition was dismissed and writ appeal No. 883/90 filed by the railway was also without success. These facts are elicited from the evidence in the case. According to WW1 the workers are entitled to get 50 per cent overtime on the basis of Ext. W5 order issued by the railway. It is further stated that the employees who have to travel are not given reservation facilities. So he seeks to base the claim on the basis of Ext. W1 and W5. The claim mentioned this I.D. is for the benefits arising from 1974 onwards. It is admitted by WW1 that the very same employees

filed the claim petition before the Labour Court, Kozhikode in 1988 and it was dismissed. Appeal filed by the workers are also dismissed in favour of the railway. He admits that O.T. slips are not produced to prove performance of O.T. work. Even though he admits that he can produce the documents no piece of paper is produced to show that these workers have done overtime work. He admits that the programme of cashiers can be ascertained in advance and they can travel if there is an available seat. It is admitted by WW1 that so far no complaint has been filed before the railway authorities complaining that they were not provided with reservation and accommodation facilities. He swears that there is provision for a separate compartment with R.P.F. security. But his grievance is that no such facility is provided. But no document is produced to show that such facilities were not given to the workers. WW2 is the workman by name Krishnankutty. According to him during 1974-75 the duty time was from 10 a.m. to 5 p.m. According to him travelling is a part of the duty and tour programmes are fixed by the Divisional Accounts Officer. He admits that the workers are provided with chart fixing the programmes for the cashiers. According to him they proceed to distribute the cash after the office time. He admits that there were trains within the programme time but they do not use such train as they had no convenience. He would further swear that crew rest van facility is not provided and that the tour programme is beyond the normal working hours and for that travelling allowance is given. They get honorarium when the target exceeds. In cross examination, he admits that the workers are in the accounts category. He has further admitted that they will not come within the running staff, operating staff or shifting workers. He has gone to the extent of admitting that they get tour programme at least a week in advance. Travelling is part of their duty. According to him O.T. slips were not given pertaining to the O.T. Wages. But no slips are produced in court. According to him he has not verified the programme so as to ascertain whether any O.T. work was done. He testified that the employees can travel first class along with armed escort. They used to get T.A. According to him they are governed by Hours of Employment Regulation. He says that they are not entitled to get crew rest van. Then he says "O.T. slips" submit

"Thus on the above evidence it is clear that the workers involved in this case come under the category of account section and for the travelling purpose, they are given T.A. They could avail of first class, apart from other facilities. They used to get advance programme about the tour and if that be so they can make necessary arrangements for reservation for the journey. As against the above evidence of the workers, the management has examined MW1, who is a section officer of the accounts department. He says that the workers are governed by the Hours of Employment Regulation and the cashiers will come within the continuous category. According to him for the very same relief they approached the Labour Court, Kozhikode and filed C.P. 55/82 to 69/82 and these claim petitions were dismissed as per Ext. M-1. As against M-1 the workers filed O.P. 637/87 which was dismissed as per Ext. M2. After Ext. M-1 and M-2 there was a joint con-

ciliation meeting on 9-1-1992. Ext. M-3 is the conciliation proceedings. It is submitted by MW1, that subsequent to Ext. M3 no employees filed any complaint that they were not provided with necessary facilities, before the authorities. According to him there are fixed dates for disbursing the salary. Programme is fixed in advance. The workers are fully aware of the fixed programme as they get advance information. They get sufficient time for making arrangements for travelling. They can travel in first class with peon and armed escorts. They can travel in Taxi and Autorikshaw, for which reimbursement is made. They get T. A. and D.A. in case they travel beyond 8 K.M. They get honorarium for the amount which exceeds 8 lakhs. Peons are entitled to get 40 per cent honorarium paid to the cashiers. They have not made any complaint from 1974 to 1982, that they are not given accommodation, T.A., D.A. or reservation facilities. M4 is the circular dated 17-10-1975 relating to Hours of Employment Regulations. As per Ext. M4 para (j), 'travelling is part of their duty. Ext. M-5 is the report of the Railway Ministry with respect to Hours of employment. Ext. M6 is the circular issued by the Railway Board on 17-5-1976. The joint procedure order issued by the Railway is Ext. M7. Ext. M8 is another circular issued by the railway on 24-5-1977. MW1 says that the workers are not entitled to get crew rest van. Nothing fruitful has come out in cross examination. Thus it can be seen from the evidence of the management that a group of petitioners filed C.P. 55/82 to 69/82 before the Labour Court, Kozhikode. They claim overtime allowance on the basis of railway tribunal award. The point that was mooted before the Labour Court, Kozhikode was whether petitioners were entitled to get any amount. After detailed discussion, the Labour Court Kozhikode dismissed all these petitions. Ext. M1 was challenged before the Hon'ble High Court which in turn as per Ext. M-2 dismissed it. It was made clear in Ext. M2 that in case the petitioners feel that they are entitled to get over time wages, they can raise I.D. and get it adjudicated. It was held by the Hon'ble High Court in Ext. M2 that there is absolutely no justification that these pay clerks who occasionally travel on duty are entitled to the benefits provided under clause 11(j) of circular No. 148/75 which is marked in this case as Ext. W1. Ext. M3 will show that the parties did not arrive at a settlement and as suggested by parties including the union, it was decided to refer the demands for adjudication. In Ext. M4 the joint procedure order dated 17-10-1975 it was decided as follows :

"No time spent as passenger on duty will count as duty (a) when a worker does not travel on any day beyond a radius of 8 Kms. from the place of his duty and (b) when a worker is provided with facility of Crew Rest Van. These instructions are applicable only in the case of staff whose daily duties involve regular travel. In the case of staff such as office, technical, ministerial class IV office staff etc., who have occasionally to travel on duty outside their jurisdiction, full credit need not be given for the time spent while travelling as passenger on duty."

Ext. M2 is a clarification with regard to the Hours of Employment Regulations. It is stated in Ext. M5 is as follows :

"It is clarified that the Ministry's decision are in respect of staff travelling spare on duty and as such the instructions contained in this Ministry's letter No. E(LL073/HER(T)/I dated 7-8-1974 would apply only to such staff who prior to 1-8-1974 had been getting the benefit of counting period of spare travel as duty in terms of subsidiary instructions No. (B) and who had not been provided with travelling facilities. As regards other staff who travel but not as spare on duty and who are provided with accommodation in trains, the period of travel will not count as duty. In regard to other categories of staff who travel otherwise than spare on duty and who are not provided with travelling facilities 50 per cent of travel time would in future be credited towards their duty hours."

As per Ext. M6 it is clarified that the phrase "Travelling facilities" may be read as "Accommodation in trains". Ext. M-7 is the joint procedure order dated 2-5-1977. The relevant portion of Ext. M7 is as follows :

"When a worker not provided with the facility of crew rest van travels as spare on duty on any day beyond a radius of 8 K.Ms. from their place of duty, all time spent for travelling from the time they commence the journey from the place of duty will be treated as duty. These instructions would apply only to such staff, who had prior to 1-8-74 been getting the benefit of counting periods of spare travel as duty in terms of subsidiary instructions No. 8 provided they travel a distance of more than 8 KMs. and are not provided with travel facilities."

All these items in the evidence indicate that the cashiers were deputed to disburse salary to other employees to various units working in the accounts section. They are given T.A., honorarium and other benefits. There is no scrap of paper to show that the workers performed over time work. They have no complaint so far, that they were not given travelling facilities. Apart from these the present claim is a sale one. It is unjust to encourage such state claims. It is a duty of the court to prevent or minimise experimental litigations. Taking into account these facts proved in the case, the workmen are not entitled to get any benefit in Ext. W1 as prayed for and that they are no entitled to get any O.T. wages. Points so found.

In the result, the reference is answered against the union holding that the action of railway administration in not applying circular No. 148/74 in respect of cashiers in the office of the Divisional Accounts Office, Palakkad and also not paying overtime allowance is legal and justifiable. So the workers are not entitled to get any relief under industrial law.

Ernakulam,
5-1-1998.

VARGHESE T. ABRAHAM, Presiding Officer

Witness examined on the side of Management :

Sri M.D. Balagopalan.

Witnesses examined on the side of Union :

WW1. Sri. C. P. Menon.

WW2. Sri Krishnakutty.

Exhibits marked on the side of Management :

Ext. M1. Photo copy of order in C.P. 55/82 to 69/82 of the Labour Court, Kozhikode dt. 13-2-1985.

Ext. M2. Copy of order in O.P. 631/87 of the High Court of Kerala dt. 14-12-90.

Ext. M3. Conciliation proceedings file No. 8/54/91-ALC/EKM dated 9-1-1991.

Ext. M4. Copy of the Joint Procedure order in P.B. Circular No. 147/95.

Ext. M5. Copy of orders in Railway Ministry letter No. E(LL)73/HER(T) in respect of Hours of Employment dated 7-6-1974.

Ext. M6. Copy of circular of Railway Board dt. 17-5-1976.

Ext. M7. Copy of Joint Procedure order dated 2-5-1977.

Ext. M8. Copy of circular No. 347/221/3 dt. 24-5-1977.

Exhibit marked on the side of Union :

Ext. W1. Supplement No. 24/75 of fortnightly gazette vol. XXV No. 24 of Southern Railway.

Ext. W-2. Copy of order in C. P. 7/84(C) of Kollam Labour Court dated 20-5-1985.

Ext. W3. Copy of judgment in O.P. 7668/85Y of Kerala High Court dt. 8-10-1990.

Ext. W4. Copy of judgment in W.A. No. 883/90 of Kerala High Court dated 16-8-1996.

Ext. W5. Copy of order issued by the Railway Board dt. 10-5-1993.

नई दिल्ली, 20 मई, 1998

का०आ०1206:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एसाए एजेन्सीस के प्रबन्धन के संघर्ष नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में लेबर कोर्ट औद्योगिक अधिकरण, अरनाकुलम

के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-5-98 को प्राप्त हुआ था।

[सं० एल-35012/1/90-आई०आर (विविध)]
पी०जे० साईकल, डेस्क अधिकारी

New Delhi, the 20th May, 1998

S.O. 1206.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Labour Court Industrial Tribunal, Ernakulam as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Essar Agencies and their workman, which was received by the Central Government on 20-5-98.

[No. L-35012/1/90-IR (Misc.)]

P. J. MICHAEL, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT LABOUR COURT, ERNAKULAM

(Labour Court, Ernakulam)

(Wednesday, the 23th day of January, 1998)

PRESENT:

Shri Varghese T. Abraham, B.A., LL.M.,
Presiding Officer.
Industrial Dispute No. 15 of 1991(C)

BETWEEN

1. M/s. Essar Agencies, Wellington Island, Cochin-682 003, 2. M/s. Aspin Wall and Company, Wellington Island, Cochin-682 003 (No. 2 is impleaded as per order in M.P. 25/96 dated 5-8-1996).

AND

Shri P. K. Mohammed, S/o. Kayi, Parayil House, Mettoor P.O., Ernakulam District, Kerala.

REPRESENTATIONS :

Shri K. A. Jalel,
Advocate, Paramara Building,
Ernakulam North, Kochi-18. —For Management No. 1.

Sri. A. X. Verghese, Advocate.
Niyamavedi, 2/63, Kochin-682-001 :
For Workman.

AWARD

The Government of India as per Order No. L-35012/1/90-IR (Misc.), dated 11-12-91 referred the following industrial dispute for adjudication :

“Whether the action of the management of M/s. Essar Agencies in refusing employment to Shri. P. K. Mohammed. Loading & Unloading worker is justified? If not, to what relief is the workman entitled to ?”

2. The case of the workman is as follows :—He joined the 1st management on 19-3-1974 as a head load worker. The 1st management was the principal employer. The second respondent is the contractor engaged by the 1st management. He had been doing the work continuously and uninterruptedly. Even though the nature of work of the petitioner is permanent, he was not given rights and benefits conferred by the statutes. He was paid only daily wages. The work was actually carried on by the petitioner for and on behalf of the 1st management. The 2nd respondent is only a name lender and benamidar for the 1st respondent. While he was discharging his duties, he met with a serious accident on 31-7-82. He sustained severe injury and he was thrown out from a lorry. There after he had suffered a stroke and he was again treated as inpatient. A meagre amount was paid to the second respondent for his treatment. No compensation was given. He filed a petition under section 12 of the Industrial Dispute Act before the Deputy Labour Officer, Kochi. But after the conciliations, there was no settlement. Thereafter from 2-8-1984 to 25-9-1984 he was again engaged as a Badali worker for a very short span of time. During that time, he was paid the half wages. Thereafter this practice was also stopped and he was denied employment. The Hon'ble High Court directed the Labour Officials to refer the dispute for adjudication and an amount of Rs. 1000 was awarded as cost. Against the decision of the High Court, the state went in appeal and in the course of argument it was submitted by the 1st respondent that the industrial dispute concerning the 2nd management will come under the purview of Central Government. So the Division Bench of the High Court directed the Asst. Labour Commissioner (Central) to refer the matter for adjudication. The Central Government declined to refer the matter. Again he approached the High Court which in turn directed the Central Government to refer the matter for adjudication. Hence the reference. He prays for reinstatement with backwages and other benefits.

3. M/s. Essar Agencies contended as follows :—It is admitted that the petitioner was a head load worker. This company was only a contractor. The workman is not entitled to get rights and benefits of the permanent workers. He was only part time daily wages worker. It is not correct to say that the petitioner sustained accident while on duty. It is incorrect to say that he was under treatment for three months. The workman is a paralysis patient. But considering the disease of the petitioner, it is unable to provide the employment and he is not able to do the work. He was only a casual worker. He never completed continuous service of more than 3 years in a calendar year. He is not entitled to get compensation. The 2nd management is impleaded as per order in M.P. 25/96 dated 24-6-96. The 2nd management is impleaded subsequent to the order of reference, the 1st management remained *ex parte*.

4. The defence taken up by the 2nd respondent management summarised as follows Aspinwall and company is not a necessary party. So the reference is bad. The dispute is between the 1st management

and his workman. There is no employer employee relationship between the 2nd management and the workman. The workman was a worker of M/s. Essar Agencies and he has no connection what so ever with the 2nd management. From the reference order it can be seen that the employer who refused employment is the 1st management. The petitioner has never worked under the 2nd management. In no conciliation proceedings, the 2nd management took part. There is no industrial dispute between these two parties. The labour authorities were convinced that the 2nd management is not at all a party. So section 2A of the Industrial Dispute Act is not attracted. It is a case of refusal of employment by Essar Agencies. The workman has not worked with Essar after 31-7-82. The dispute is referred only in 1991. Impleading application is filed in 1996. So there is a lapse of 14 years. Essar Agencies is undertaking the work in various companies and 2nd management is only an agent for their principals. There are clearing and forwarding agencies. The second management is a licensed customs house agent. There is no concept of principal employer and immediate employer under the Industrial Disputes Act. The workman was never engaged casually or temporarily or permanently by the 2nd management and it has no knowledge about the accident. The workman is admittedly not able to do any work. He is not entitled to get any relief.

5. WW1 is examined and Exts. W1 and 2 are marked. No evidence is adduced on the management side.

6. Points which emerge for conciliation are :

- (1) Who was the employer of the workman under the order of reference?
- (2) Was there the employer employee relationship between Aspinwall and Company and the present workman ?
- (3) Whether the refusal of employment to the workman by the 1st management is justifiable?

7. Points 1 to 3 : According to the workman he joined the 1st management in March 1974 as a head-load worker. He was paid daily wages. He worked about 240 days in a year. The 2nd respondent is a contractor. Ext. W1 is the pass issued by the 1st management. Ext. W1 series are the passes issued for Aspinwall and Company by Essar Agencies. According to him while he was on duty he met with an accident, one side of the body was paralysed. He was paid Rs. 800. He had a heart attack and he fell down from the vehicle. He worked from 2-8-84 to 25-9-84 and thereafter he was denied employment. In cross examination, WW1 has sworn that he was not paid any wages at any time by the 2nd management. He was paid wages by Essar Agencies which is the 1st management. His complaint before the Labour Officer was that he was denied employment by Essar Agency. It is admitted that he was working under Essar Agency and at that time he sustained illness. In cross examination for 1st management, he says that he discharged the work for Aspinwall and Company. Thus considering the evidence on record it can be seen from

the admission of WW1 that he was employed by the 1st management, paid by the 1st management and he was paid wages only for the days work. It is also admitted by WW1 that Aspinwall and Company did not engage him and no appointment order was issued to him. Categorically he says that he was paid wages by Essar Agencies. In these circumstances, no kind of liability can be fastened on Aspinwall and Company. In the case on hand it has come out in evidence that he was unable to do loading and unloading work as his one side of the body was paralysed and that he has heart ailments. Continuous ill health is one of the exempted grounds from the definition of retrenchment. But judicial sympathy and humanitarian consideration persuade me to direct the 1st management M/s. Essar Agencies to pay Rs. 5,000 to the workman. This payment is made on the grounds of humanitarian consideration, judicial sympathy and compassion. Points so found.

In the result, the reference is answered holding that the refusal of M/s. Essar Agencies for providing employment to Sri. P. K. Muhammed loading and unloading worker is justifiable. But an award is passed in favour of the workman directing Essar Agencies to pay an amount of Rs. 5000 (Rupees Five thousand only) to the workman within two months from today; failing which the amount will carry interest at the rate of 12% per annum.

Ernakulam,

28-1-1998.

VARGHESE T. ABRAHAM, Presiding Officer

APPENDIX

Witness examined on the side of Workman :

WW1. Sri. P. K. Muhammed.

Exhibits marked on the side of Workman :

Ext. W1. Work pass issued by M/s. Aspinwall & Company dated 20-8-84 to Sri. P. K. Muhammed.

Ext. W-2. A medical certificate issued to P. K. Muhammed from General Hospital, Ernakulam dated 9-10-85.

नई दिल्ली, 20 मई, 1998

का०आ०1207.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मिनरल एक्सप्लोरेशन कारपोरेशन लि० के प्रबन्धन के संबंध निर्योजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं०-2, मुम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-5-98 को प्राप्त हुआ था।

[सं० एल-29012/96/95-आई० आर (विवाद)]

पी०जे० माईकल, डेस्क अधिकारी

New Delhi, the 20th May, 1998

S.O. 1207.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Mineral Exploration Corporation Ltd., and their workman, which was received by the Central Government on the 20-5-1998

[No. L-29012/96/95-IR (Misc.)]

P. J. MICHAEL, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, MUMBAI

PRESENT :

Shri S. B PANSE, Presiding Officer

REFERENCE NO. CGIT-2. 1st OF 1996.

EMPLOYERS IN RELATION TO THE
MANAGEMENT OF M/s. M.E.C. Ltd.,
NAGPUR.

AND

Their Workman.

APPEARANCES :

FOR THE EMPLOYER : Mr. Govind Mishra
Advocate and Mr. Paul Gaigole Represent-
ative.

FOR THE WORKMEN : Mr S. K. Jain,
Advocate.

Mumbai, dated 27th March. 1998.

AWARD—PART—II

On 21st March, 1997 I came to the conclusion that the domestic inquiry which was held against the workman was as per the principles of Natural Justice and the findings of the inquiry Officer are not perverse. Now in this Award I have to answer the remaining issues.

2. The facts giving rise to the present dispute can be summarised as follows :

Mohd. H. Rahman, I.D.C., is an employee in the Mineral Exploration Corporation. He joined the service in the year 1986. He was served with a chargesheet for a major misconduct and a departmental inquiry was conducted against him.

3. Now the issues that fall for my consideration and my findings there on are as follows :

- | Issues | Findings. |
|--|-----------|
| 3. Whether the punishment awarded to the worker is shockingly disproportionate | No. |

to the charges proved against him ?

- | | |
|--|---------------------------------------|
| 4. Whether the action of the management of Mineral Exploration Corporation Limited, Nagpur in reducing the pay of Rehman w.c.f. 1-12-1993 is justified, legal and proper ? | Action is justified legal and proper. |
|--|---------------------------------------|

- | | |
|---|-------------------|
| 5 If not, to what relief the workman is entitled to ? | Does not survive. |
|---|-------------------|

REASONS

4. The charge against the workman was that he with ulterior motive presented a forge gate pass at security gate at 4.15 p.m. on 18-12-1991 and left the premises of the company unauthorisedly. The charge is held to be proved.

5 On 21-12-1991, Chief Mining Engineer after receiving the report that the workman used the gate pass which was issued by unauthorised persons. He was therefore warned not to repeat such act in future. Thereafter in a departmental inquiry the workman was found to be guilty and the disciplinary authority after perusal of the inquiry report gravity of misconduct, past records and all other aggravating and extenuating circumstances of the case imposed a penalty on the worker to the effect of reduction of pay by one stage in the time scale of pay with immediate effect. This order was passed on 1-12-1993.

6. Assistant Manager (Legal) by his order dated 26th September, 1994 as an Appellate authority considered the appeal and confirmed the penalty imposed upon the workman. He had further observed that the warning issued by Chief Manager dated 21-12-1991 shall get superseded by the penalty imposed by the disciplinary authority.

7. Now it is to be seen whether the punishment which is awarded to the workman is shockingly disproportionate. Looking to the charges which I have referred above it is very clear that a forge gate pass was presented by the workman while leaving the premises of the company. This action of the workman is obviously a serious one. It is a major misconduct. I therefore find that the punishment which is awarded cannot be said to be shockingly disproportionate. No record is put forward by the workman to show that in a similar type of case the management had taken a different view of the matter.

8. The Learned Advocate for the workman tried to argue that the workman is punished two time for one irregularity. According to him he was first warned and later on his pay was reduced by one stage in a time scale of pay. The Learned Representative for the management on the other hand argued that for major misconduct there is no punishment of warning and under such circumstances it cannot be said that the workman is punished twice. I find substance in it.

9. After perusal of the Mineral Exploration Corporation Disciplinary and Appeal rules, it reveals that Rule-5 deals with penalties. In minor penalties at Clause-'A' there is a penalty of 'Censure'. But there is no such penalty in major penalties. The charge against the workman was under Rule-5.1.1., 5.1.18 ; 5.1.20 of MECL discipline and Appeal rules. The charge being under a major misconduct I am not inclined to accept that the punishment which was awarded to the workman is double punishment. Further more the Appellate authority in a categorical term had stated that the warning issued by Chief Mining Engineer dated 21-12-1991 which got superceded by the penalty imposed by the disciplinary authority. For all these reasons I find that the action of the management is justified, legal and proper. I record my findings on the issues accordingly and pass the following order :

ORDER

The action of the management of Mineral Exploration Corporation Ltd., Seminary Hills, Nagpur, in reducing the pay of their workman Shri Mohd. H. Rehman L. D. C. w.e.f. 1-12-1993 is justified, legal and proper.

S. B. PANSE, Presiding Officer.

नई दिल्ली, 20 मई, 1998

का०आ०1208.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक आफ राज० लिमि०, जोधपुर के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण कम-लेबर कोर्ट, जोधपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-5-98 को प्राप्त हुआ था।

[संख्या एल-12012/87/95-आई०आर (बी० I)]

पी०जे० माईकल, बैंक अधिकारी

New Delhi, the 20th May, 1998

S.O. 1208.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal-cum-Labour Court, Jodhpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bank of Rajasthan Ltd., Jodhpur and their workman, which was received by the Central Government on 20-5-1998.

[No. L-12012/87/95-IR (B. I)]

P. J. MICHAEL, Desk Officer.

अनुबंध

श्रम न्यायालय, जोधपुर

पीठासीन अधिकारी :—श्री चान्दमल त्रोटला, आर.एच.जे.एस.

औद्योगिक विवाद (केन्द्रीय) :—5/96

उप महासचिव, बैंक आफ राजस्थान इम्प्लॉईज यूनियन परवाना भवन, माधोबाग जालोगीगेट, जोधपुर-342001
—प्रार्थी

बनाम

क्षेत्रीय प्रबन्धक, बैंक आफ राजस्थान लिमि० क्षेत्रीय कार्यालय 3/5 चोपासनी रोड जोधपुर-342001
—अप्रार्थी

उपस्थिति :—

(1) प्रार्थी की तरफ से श्री विजय मेहता प्रतिनिधि उप.

(2) अप्रार्थी की तरफ से कोई हाजिर नहीं (इकतरफा)।

अधी निर्णय

दिनांक : 6-4-98

श्रम मंत्रालय भारत सरकार की अधिश विज्ञप्ती संख्या एल-12012/87/95-आई०आर० (बी) दिनांक 10-6-96 से नियोजक बैंक आफ राजस्थान तथा उनके कर्मचारियों/श्रमिक के संगठन बैंक आफ राजस्थान यूनियन के मध्य उत्पन्न हुआ निम्नांकित औद्योगिक विवाद, औद्योगिक विवाद अधिनियम की धारा 10 के अन्तर्गत अधिनियम हेतु इस औद्योगिक अधिकरण को प्रेषित किया गया तथा दिनांक 20-8-96 को नियमित औद्योगिक विवाद 5/96 पर पंजिबद्ध हुआ।

“Whether the action of Regional Manager, Bank of Rajasthan Ltd., Regional Office, Jodhpur in not creating the post of Head Peon at Sardarpura Branch of Bank of Rajasthan, Jodhpur is legal and justified? If not, to what relief is the concerned worker entitled and from what date?”

विवाद के लिए संगठन की ओर प्रस्तुत मांग सूची में बताया गया है कि नियोजक विपक्षी बैंक तथा आल इंडिया बैंक आफ राजस्थान इम्प्लॉईज फ़ेडरेशन के बीच सन् 1981 में एकपक्षीय समझौता हुआ जिसमें यह निश्चिन किया गया कि प्रत्येक बैंक शाखा जहां पांच पी-ग्रोन कम-गार्ड तथा पीग्रोज कम चौकीदार हैं वहां पर एक हेड पीग्रोन का पद सृजित किया जाएगा परन्तु इस समझौते के अनुसार विपक्षी के जोधपुर सोजनी गेट शाखा पर पांच चपरासी होने के कारण हेड पीग्रोन होना चाहिए परन्तु वहां पर ऐसा पद सृजित नहीं किया गया। आवेदन के अनुसार पांच कर्मचारियों की गणना में एक्स्टेंशन काउन्टर पर कार्यरत कर्मचारी वफ्तरी भी शामिल होता है तथा इस शाखा का एक एक्स्टेंशन काउन्टर आवर्ष विद्या मन्दिर कमला नेहरू नगर में है जहां पर कार्यरत कर्मचारी पीग्रोन को हेड काउन्टर पर सृजन हेतु गणना में नहीं लिया गया जबकि ऐसा किया जाना चाहिए था। आवेदन के अनुसार एक्स्टेंशन काउन्टर अपने आप में कोई अलग बैंक की शाखा नहीं होती क्योंकि अलग शाखा के लिए रिजर्व बैंक की अनुमति आवश्यक होती है जबकि एक्स्टेंशन काउन्टर के लिए आवश्यक नहीं है एवं एक्स्टेंशन काउन्टर के कर्मचारियों का वेतन शाखा से ही उठता है तथा शाखा का मैनेजर ही मुख्य कार्यकारी

अधिकारी तथा एक्सटेंशन काउण्टर के ईंचार्ज का अधिकारी भी होता है व आवश्यकता अनुसार मैनेजर शाखा के स्टाफ को एक्सटेंशन काउण्टर पर तैनात करता है। बताया गया है कि हेड पीओन का पद सृजन की मांग करने पर बैंक ने जाहिर किया है कि एक्सटेंशन काउण्टर के पीओन की गणना शाखा के कर्मचारियों में नहीं हो सकती है—प्रार्थना की गयी है कि एक्सटेंशन काउण्टर के कर्मचारियों की गणना करने हुए इस सरदारपुरा शाखा पर हेड पीओन का पद सृजित किया जावे।

इस कार्यवाही की सूचना विपक्षी को प्रेषित की गयी तथा दिनांक 28-10-96 को अपना पक्ष प्रस्तुत करने हेतु उपस्थित की सूचना मिलने पर विपक्षी की ओर से प्रतिनिधि उपस्थित आए जो बाद में भी उपस्थित हुए परन्तु 13-10-97 को विपक्षी की तरफ से कोई उपस्थित हुआ और न ही मांग सूची का उत्तर प्रस्तुत किया गया एवं 13-10-97 के आदेश में विपक्षी के विरुद्ध एक पक्षीय कार्यवाही।

एक पक्षीय साक्ष्य में श्री एस०एस० विजय अध्यक्ष प्रार्थी यूनियन का शपथपत्र प्रस्तुत किया गया तथा शपथ पत्र में आवेदन के अनुसार बताया गया है कि किसी तरह के प्रतिवाद व तर्क के अभाव में शपथपत्र में अंकित तथ्य मानने योग्य है। शपथपत्र तथा 20-7-81 (81) समझौते के प्रतिलिपि के पैरा नम्बर 2 (जो की हेड पीओन का है) में स्पष्ट है कि प्रत्येक शाखा जहाँ पर कि पांच या अधिक पीओन कम गार्ड कम चौकीदार है उनमें से एक हेड पीओन होगा अतः एवं प्रमाणित है कि यदि पांच ऐसे सबोर्डिनेट कर्मचारी है तो उनमें एक हेड पीओन होना चाहिए। शपथपत्र में स्पष्ट है कि एक्सटेंशन काउण्टर शाखा का ही भाग है अतः एवं ऐसे काउण्टर के कर्मचारी भी उपरोक्त तरह की गणना में आने चाहिए अतः इस शाखा पर पांच या अधिक ऐसे कर्मचारी होना प्रकट होता है तथा 1981 से उपरोक्त समझौते के अनुसार ऐसे कर्मचारियों में से एक को हेड पीओन बनाना चाहिए, अर्थात् एक पद अपग्रेड कर हेड पीओन किया जाना चाहिए इसके अनुसार यह औद्योगिक विवाद अधिनियमित किए जाने योग्य है।

अधिनियम:—श्रम मंत्रालय की विज्ञप्ति आदेश संख्या एल-12012/87/95-आई०आर० (बी) दिनांक 10-6-96 अधिनियम हेतु प्रेषित औद्योगिक विवाद इस तरह निर्णित होता है कि

The action of Regional Manager Bank of Rajasthan Ltd., Regional Office Jodhpur in not creating the post of Head Peon at Sardarpura Branch of Bank of Rajasthan, Jodhpur is not justified. It is directed that in the Sardarpura Branch of Rajasthan Bank a post of Head Peon be created. This post shall be created by upgradation of post of one of the subordinate Staff of that Branch including Peon-cum-guards and Peon-cum-Chowkidars.

निर्णय की प्रति श्रम मंत्रालय भारत सरकार को प्रकाशनार्थ प्रेषित की जावे।

चान्दमल तोतला, न्यायाधीश

नई दिल्ली, 21 मई, 1998

का०आ० 1209.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नागार्जुना ग्रामीण बैंक, खम्मम के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-I, आन्ध्र प्रदेश के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-5-98 को प्राप्त हुआ था।

[संख्या एल-12012/56/95—आई०आर० (बी० I)]

पी० जे० माईकल, डेस्क अधिकारी

New Delhi, the 21st May, 1998

S.O. 1209.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-I, Andhra Pradesh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Nagarjuna Gramena Bank, Khammam and their workman, which was received by the Central Government on 20-5-1998.

[No. L-12012/56/95-IR (B-I)]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

PRESENT :

Sri V. V. Raghavan, B.A., LL.B., Industrial Tribunal-I.
Dated, 23rd day of April, 1998
Industrial Dispute No. 78 of 1996

BETWEEN

Shri B. Bikshapathi S/o Rajaiah Ex. Part Time
Sweeper Bommalararamam (Post) Bhoinigir Tq.
Nalgonda District .. Petitioner.

AND

The Chairman, Nagarjuna Gramena Bank,
Khammam-507001 .. Respondent

APPEARANCES :

M/s. V. Hari Haran, J. Parthasarthy and A. Chandrasekhar Advocates—for the Petitioner.

M/s. K. Srinivasa Murthy and G. Sudha Advocates—for the Respondent.

AWARD

The Government of India, Ministry of Labour, New Delhi by its Order No. L-12012/56/95-IR (B-I) dated 10-6-1996 referred the following dispute under Section 10(1)(d) and 2-A of Industrial Disputes Act, 1947, to this Tribunal for adjudication :

"Whether the action of the Management in dismissing the workman Shri B. Bikshapathi from the service with effect from 10-3-92 is justified or not? If not, to what relief the workman is entitled?"

Both the parties appeared and filed their pleadings.

2. The workman B. Bikshapathi filed a claims statement containing as follows :

The workman, hereinafter called as 'Petitioner' was appointed as Part-time sweeper at Bommalararamam Branch in Nalgonda District on 27-2-1979. His services were terminated on 10-6-1987. He submitted a protest petition on 16-6-1987. The peti-

tioner was served with chargesheet dated 2-4-1988 alleging that he misappropriated an amount of Rs. 295 by using forged debit vouchers belonging to the customers. The petitioner gave a reply. Another chargesheet dated 1-3-89 was issued alleging that he misused the amounts withdrawn from the depositor's account by using forged debit vouchers and also forged the signatures of the respective account holders. The petitioner participated in the enquiry (the capacity of which was questioned in the claims statement at length and it is not necessary to extract it here as this Tribunal held by an order dated 21-8-97 that the enquiry is not valid). The Enquiry Officer held that the petitioner is guilty of the charges alleged against him. The then Manager and the Cashier of the Respondent-Bank were responsible for the fraudulent withdrawal of the amounts from the accounts of the deposit holders. These persons were protected by the Bank. The petitioner was victimised and made a scape-goat in the transaction. A criminal complaint was given against the manager and the petitioner but no enquiry was conducted against the Manager. The said two persons are responsible but not the petitioner. The petitioner was illegally terminated. The petitioner is entitled to reinstatement, back wages and other attendant benefits.

3. The respondent filed a counter contending as follows :

The petitioner forged the signature/thumb impression of the depositors on the withdrawal slips and he misappropriated the amounts. The petitioner committed several misconducts and irregularities as well as misappropriated while he was working in the Bommalararamam Branch. The domestic enquiry was conducted and the enquiry proved that the petitioner is guilty of misconduct. The allegation

that the Manager and the Cashier were responsible for the fraudulent withdrawal of the amounts from the accounts of the deposit holders are not correct. There are no merits in the case. The petitioner is not entitled to any relief.

4. The point for consideration is whether the petitioner is entitled to relief of reinstatement, with back wages and other attendant benefits ?

5. Point.—The petitioner (WW-1) worked as part-time sweeper in Bommalararamam Branch of Nalgonda Gramapana Bank, Nalgonda District from 27-2-1979 to 10-6-1987. His services were terminated by the Incharge Branch Manager (MW-1) on 10-6-1987 orally on the instructions of the Head Office as it was found that the petitioner forged the signatures of the customers and withdrew the small amounts. Later an enquiry was conducted and the petitioner was formally dismissed. As the enquiry was held after the dismissal was effected, by an order dated 21-8-1997 this Tribunal held that the enquiry is invalid and vitiated. However the respondent-Management is permitted to lead the evidence in proof of misconduct of the petitioner. The respondent examined MW-1, the then Incharge Branch Manager, MW-2 Officer who worked as Branch Manager for sometime and MWs-3 and 4 customers. The respondent exhibited Exs. M-1 to M-41. The petitioner examined himself as WW-1 and filed Exs. W-1 and W-2.

6. The petitioner was served with Ex. M-1 charge sheet dated 2-4-98 with the following charges :

"With the help of the then Junior Clerk-cum-Cashier Shri Md. Saleem (now under suspension) you had misutilised the amounts withdrawn from the following deposit accounts in a deceitful manner by using forged debit vouchers and that you yourself had forged the signatures of the respective depositors on the relative debit vouchers.

S. No.	A/C. No.	Name and address of the depositor	Date	Amount withdrawn
1.	624	Sarvashri Dokuri Mallaiah S/o Beeraiah S/o Cheekati Mamidi	20-1-86	25/-
2.	350	Siddanki Balaiah S/o Sailu R/o Hazipur	23-8-84	25/-
3.	290	Smt. Katakam Laxmi R/o Madhapur	24-10-85	20/-
4.	293	Dharavath Ravuji S/o Pooka R/o Dheekati Mamidi	17-6-85	100/-
5.	295	Dharvath Lakshma R/o Cheekati Mamidi	23-7-85	100/-
6.	372	Mandala Peeddulu S/o Pendaiah R/o Cheekati Mamidi	22-7-85	25/-

Ex. M-2 amended Charge-Sheet was also served upon him.

7. The main allegation is that the petitioner, Mr. Saleem, the then Cashier and MW-1, the then Branch Manager colluded together and withdrew the amount of Rs. 200 and odd forging the signatures of the customers. The amount involved is very small. The petitioner admitted that he wrote some of the vouchers but he pleaded for the first time in this Tribunal that he did so at the instance of the Manager and Cashier. His version cannot be believed. He gave confession statement also before the Officer of the Bank before the enquiry was conducted. There is no doubt that the petitioner was guilty of forging the signatures of the customers of the bank and withdrawing the small amounts from their accounts. But the Branch Manager (MW-1) and the Cashier late Saleem were also parties to this conspiracy. A Police report was given against MW-1, the then Manager and after the Police filed charge sheet the case was withdrawn by the Bank. However he was punished with stoppage of one increment for his negligence. The cashier Saleem appears to have committed suicide during the pendency of the domestic enquiry against him. His family was rewarded with a post to one of his children. But the petitioner services are terminated. All the three are equally guilty but harsh punishment was given to the petitioner.

8. In the said circumstances, while holding that the petitioner is guilty of the charges framed against him, an award is passed in exercising the powers vested to this Tribunal under Section 11-A of the I.D. Act, the punishment of removal from service is reduced to reinstatement without back wages, but with continuity of service. The respondent-Bank is directed to post him as Part-time Sweeper in any one of its Branches in Nalgonda District. The petitioner is entitled to benefits, if any by the continuity of service.

Dictated to the steno-typist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 23rd day of April, 1998.

V. V. RAGHAVAN, Industrial Tribunal-I
Appendix of Evidence

Witness examined for

Petitioner :

WW-1—B. Bikshapathy.

(on merits of the case)

Witness examined for

Respondents :

MW-1—B. Yadav Reddy

MW-2—A. Sudhakar Rao

MW-3—S. Balaiah

MW-4—Dokuri Mallaiiah.

Documents marked for the petitioner

Ex. W-1—Letter dated 3-6-87 to the Branch Manager not to engage the services of the Petitioner.

Ex. W-2—Letter dated 11-6-87 to the Dist. Manager intimating the termination of services of petitioner.

Documents marked for the Respondent

Ex. M-1—Charge Sheet in Telugu issued to the petitioner on 2-4-88.

Ex. M-2—Amendment dated 7-4-88 to the charge sheet Ex. M-1 (in Telugu)

Ex. M-3—Appointment order dated 6-12-88 of K. Mallikarjuna Rao as Enquiry Officer.

Ex. M-4—Charge Sheet dated 13-89 in English.

Ex. M-5—Withdrawal slip of D. Mallesh.

Ex. M-6—Withdrawal slip of S. Balaiah.

Ex. M-7—Withdrawal slip of K. Lakshmi.

Ex. M-8—Withdrawal slip of Ravuji.

Ex. M-9—Withdrawal slip of Latchanna.

Ex. M-10—Withdrawal slip of M. Peddulu.

Ex. M-11—S.B. Account ledger folio of D. Mallaiiah.

Ex. M-12—S.B. Account ledger folio of K. Lakshmi.

Ex. M-13—S.B. Account ledger folio of Ravuji.

Ex. M-14—Saving Bank Account ledger folio of Latchanna.

Ex. M-15—S.B. Account ledger folio of Peddulu.

Ex. M-16—Letter addressed by S. Balaiah.

Ex. M-17—Letter dated 19-5-88 addressed by Mallaiiah.

Ex. M-18—Letter dated 10-5-88 addressed by Peddulu.

Ex. M-19—Letter dated 15-1-84 addressed by the petitioner.

Ex. M-20—Letter dated 22-4-84 of the petitioner.

Ex. M-21—Application for S.B. Account given by Sri D. Mallesh.

Ex. M-22—Application for S.B. Account by S. Balaiah.

Ex. M-23—Application for S.B. Account of D. Revuji.

Ex. M-24—Application for S.B. Account of M. Peddulu.

Ex. M-25—Thumb impressions of Siddanki Balaiah obtained in this Tribunal.

Ex. M-26—Statement of Dokuri Mallaiiah in the Enquiry Proceedings.

Ex. M-27—Thumb impression of Dokuri Mallaiiah obtained in this Tribunal.

Ex. M-28—Letter dated 19-4-90 given to the Enquiry Officer by WW-1.

Ex. M-29—Letter of WW-1 to the appellate authority dated 10-2-92.

Ex. M-30—Appeal grounds made by WW-1 to the Chairman of the Bank on 8-2-92.

Ex. M-31—Proceedings of the Chairman.

Ex. M-32—Appeal against the order of punishment dated 18-4-92.

Ex. M-33—Payment of subsistence allowance paid to the petitioner dated 9-5-92.

Ex. M-34—Receipt of WW-1 for subsistence allowance dated 9-5-92.

Ex. M-35—do- receipt dated 9-5-92.

Ex. M-36—Sending the file of original proceedings of WW-1 dated 22-1-91.

Ex. M-37—Disciplinary proceedings dated 10-3-92.

Ex. M-38—Proceedings of Chairman, dated 7-12-91.

Ex. M-39—Letter dated 5-11-92 to the petitioner confirming the punishment of dismissal.

Ex. M-40—Order of Hon'ble High Court dated 27-8-90 in WP No. 12190/90.

Ex. M-41—Letter dated 9-3-92 of S. Raghavachari to Sri K. Mallikarjuna Rao.

नई दिल्ली, 26 मई, 1998

कांआं 1210.—श्रीयोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबन्धन के सम्बद्ध निधियों और उनके कर्मचारों के बीच, अनुवर्ध में निविष्ट श्रीयोगिक विवाद में केन्द्रीय सरकार श्रीयोगिक अधिकरण, कानपुर के

पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-5-98 को प्राप्त हुआ था।

[सं० एल-अण्डर सैक्शन 33ए/97-आई०आर० (बी० II)]

पी० जे० माईकल, डेस्क अधिकारी

New Delhi, the 26th May, 1998

S.O. 1210.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bank of India and their workmen, which was received by the Central Government on 25-5-1998.

[No. L-Under Sec. 33-A/97-IR (B-II)]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT PANDU NAGAR, KANPUR

Industrial Dispute No. 117 of 1995

In the matter of dispute :

BETWEEN

Bank of India Staff Association
C/o B. P. Saxena
426-W-2 Basant Vihar
Kanpur.

AND

The Regional Manager
Bank of India
Virendra Smriti Complex
Civil Court Road
Civil Lines Kanpur.

AWARD under Section 33-A of I. D. Act

1. This is an application under Section 33-A of I. D. Act, by Parmanand Singh for reinstatement in respect of concerned workman Ram Sewak with back wages on the ground that his service were terminated in breach of provisions of Section 33-A of I. D. Act. The case of the applicant is that he has raised I. D. No. 36 of 1993 for regularisation of his services against Bank of India which is still pending. His case is that he was engaged as sepy on temporary basis and was continue to work upto 1993. As he was not regularised he has claimed regularisation. It is alleged that during the pendency of this reference the opposite party bank has terminated the services of the workmen on 18-12-93 without complying with the provisions of Section 33-A of I. D. Act, hence this termination is bad. Accordingly, he is entitled for reinstatement.

2. The opposite party has filed reply in which it is alleged that the concerned workmen was taken as casual worker to do work as and when necessity arose, he was never engaged as a sepy. He did not work beyond 1991, hence question of termination from service 18-12-93, does not arise. As he was not in service on the date of alleged termination, question of its being bad does not arise.

3. In the rejoinder nothing new has been alleged.

4. In support of his case, the concerned workman Ram Sewak has examined himself as WW-1 whereas management examined S. P. Pandey an officer of the bank as M.W.1 and Anupnes Gupta as M.W.2. No documents have been filed in this case.

5. Further from the claim statement of the concerned workman of I. D. No. 36 of 1996 it emerges out that from 1983 to 1993 he has worked intermittently. In the year 1991 he claims to have worked for 215 days, in the year 1992 for 205 days and in the year 1993 for 113 days. The management in the written statement has shown that the concerned workman had worked upto August, 1991.

In the year 1991 in the month of January, he had worked for one day, in March for one day and in August for one day.

6. Thus the only question which arises for consideration is as to whether the concerned workmen had worked upto 1993 as alleged by him or upto August 1991 as alleged by the management.

7. As said earlier both the above mentioned witnesses have supported their rival contentions. There is Ext. W-2 in I.D. 36 of 1993 which are in the nature of the comments of the bank which shows that the concerned workman had not worked beyond 1990. No doubt the concerned workman has filed Ext. W-1 the details of number of working days. It is not authentic as it has not been supported with any register of vouchers. On the other hand the evidence given by the management witness is based on perusal of record, hence it is entitled for greater weightage. Accordingly I accept the version of the management and it is hold that the concerned workman had worked upto August, 1991. Thereafter he did not work. In this way in the year 1993, on the date of alleged termination he was not in service. Even on the date of reference of I. D. No. 36 of 93 he was not in service hence question of breach of provisions of Section 33-A of I. D. Act does not arise.

8. Accordingly, the present application under Section 33-A of I. D. Act is rejected and the concerned workman is not entitled for any relief.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 26 मई, 1998

का०आ० 1211.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इलाहाबाद बैंक के प्रबन्धन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-5-98 को प्राप्त हुआ था।

[सं० एल-12012/95/92-आई०आर० (बी० II)]

पी० जे० माईकल, डेस्क अधिकारी

New Delhi, the 26th May, 1998

S.O. 1211.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of Allahabad Bank and their workman, which was received by the Central Government on 25-5-1998.

[No. L-12012/95/92-IR (B-II)]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT PANDU NAGAR, KANPUR

Industrial Dispute No. 111 of 1992

In the matter of dispute :

BETWEEN

General Secretary, Staff Bank Staff Association
26-A North Malaka Allahabad.

AND

Assistant General Manager
Allahabad Bank
Taksal Theatre Bhawan
Nadesar, Varanasi.

APPEARANCES :

M. K. Verma—for the Management Bank and
B. P. Saxena—for the Union.

AWARD

1. Central Government, Ministry of Labour, vide Notification No. L-12012/95/92-L.R. (B-II) dated 8-9-92 has referred the following dispute for adjudication to this Tribunal—

Whether the action of the management of Allahabad Bank, Varanasi of stopping four increments with cumulative effect of Shri Dinanath Pathak, clerk-cum-cashier, vide their order dated 1-3-88 is justified and correct? If not what relief the workman is entitled to?

2. The concerned workman Dinanath Pathak was working as clerk at Bhadohi Branch of the opposite party Allahabad Bank. At that time M. C. Mehrotra was working as Branch Manager at that branch whereas A. N. Mishra was officiating as Head Cashier relieved. The concerned workman was issued a chargesheet dated 9-7-87 for various acts of commission on 3-10-85 which runs as under—

1. That on 3-10-85 at about 12.00 noon you put undue pressure on your Bhadohi Branch Manager for getting Sri A. N. Mishra, Officiating Head Cashier relieved though branch manager had asked for reasons which were not given by Sri Mishra instead Sri Mishra advised that he will appraise the manager about the reasons for relief in his place in the evening. Even then you exerted pressure on branch manager to provide relief and spare Sri Mishra from work for the rest of the day. Thus the branch manager yielded under your pressure as you were union representative and to avoid unpleasantness with you. The branch manager provided relief in place of Sri Ajay Narain Mishra officiating head cashier without handing over complete charges of cash to Sri Nankoo Lal retired from duty for the rest of that day and Sri Mishra resumed his work only in the evening after close of business hours.

That on 3-10-85 you left office at 2.25 p.m. as admitted in your letter dated 5-10-85 after of course verbal permission of the branch manager on pretext of illness of your wife.

That on 3-10-85 you had purchased three drafts aggregating Rs. 1500 (Rupees 500 each) in favour Bajaj Auto Ltd. (for cub scooter booking) by deposit of cash. On scrutiny of your SB A/c No. it is observed that after deposit of your monthly salary and loan withdrawals there is a nominal balance every month which shows you have no regular saving and remain hand to mouth. How you all of a sudden arranged money for booking not only one but for three Bajaj Cub Scooter when you have never surplus funds at your disposal. You were working in the office on 3-10-1985 up to 2.25 p.m. and you have come to know about the cancellation of cheque No. 9598 for Rs. 57,300 drawn by M/s. Jamai International. You were also fully aware that the cheque in question had been torn by Sri A. K. Pandey Clerk of your branch, and payment of the same had not been made to the payee and a fresh cheque for Rs. 27,000 was encashed by the account holder as his account did not show sufficient funds to meet his drawing of Rs. 57,300 after detection of amount of Rs. 26,608-90 p. of 1-10-85 which was omitted to be debited to their account. When you came to know that the cheque for Rs. 57,300 had been destroyed, you in connivance with Sri A. N. Mishra, Offg. Head Cashier embezzled the amount. To dispose

of the amount of Rs. 57,300, you played a trick and the Branch Manager was unduly pressurised and terrorised by you for relieving Sri Mishra, without any cogent reasons.

One R. S. Pai, Manager at Regional Manager's Office, Allahabad was appointed Enquiry Officer. After completing enquiry he submitted his report dated 8-2-88 holding that charges Nos. 1 and 3 were partially proved whereas charge No. 2 was fully proved and charge No. 4 was not proved at all. The Disciplinary Authority disagreeing with the report of the Enquiry Officer held that all the charges were duly proved hence the concerned workman was awarded punishment by way of stoppage of four increments w.e.f. 1-3-88. Feeling aggrieved the concerned workman has raised the instant industrial dispute. In the claim statement, inter alia, fairness and propriety of the domestic enquiry was challenged. It was further alleged that he had no hand in the encashment of Rs. 57,000. In reply the management maintained that the enquiry was fairly and properly held and further the concerned workman was the main brain behind this misappropriation. On the pleadings of the parties preliminary issue was framed—

Whether the domestic enquiry conducted by the management was fair and proper?

Before the Enquiry Officer the management has examined M. C. Mehrotra, MW-1, Branch Manager, R. D. Pandey MW-2 Special Assistant besides ME-1 torned cheque and Ext. ME-2 cheque for Rs. 26,000 were filed. In rebuttal the concerned workman examined Dr. Dinesh Chandra Malik WW-1, Om Prakash WW-2, R. C. Purohit WW-3 and himself as WW-4. The first three witnesses had given evidence on charge No. 3 whereas the concerned workman has given evidence on all charges.

3. I have gone through the evidence and have perused the record.

4. The authorised representative for the concerned workman has not shown any procedural defect in the holding of enquiry. His only contention is that finding is perverse and that charge No. 2 does not amount to misconduct at all.

5. Now it will be seen as to whether the finding on all the charges are perverse.

6. First of all charge No. 4 will be taken up which is the axis on which the remaining three charge rotate. The Enquiry Officer in his report has held that this charge is not proved. The Disciplinary Authority while disagreeing with this report has given following reasons at page 10 of the order which reads as under—

MW-2 has stated in his statement dated 4-10-85 (Ext. ME-11) and also during examination (page 21) that the entry of Rs. 57,000 was deleted from his cash scroll at about 12.00 noon. This means that the cheque was cancelled around 12.00 noon and immediately thereafter the cheque was torn by Sri A. K. Pandey, clerk, as stated by MW-1 on page 7. Sri D. N. Pathak, charged employee was working in the nearby counter of bills and drafts and he must have been the cheque for Rs. 57,300 being torn off by Sri Pandey and also that payment of the same and not been made to the party. He also show that afresh cheque for Rs. 27,000 has been encashed by the party at around same time as stated by MW-1 on page 7. He, therefore, saw that there was an opportunity to embezzle the lucrative amount of Rs. 57,300 as it was still in the cash department and in connivance with Sri A. N. Mishra, Offg. head cashier made a plan to embezzle the amount of Rs. 57,300 and in order to dispose of the amount quickly Sri Pathak played a trick by (1) approaching the manager around 12.00 to allow him to leave office early on the false pretext that his wife was ill and left office at 2.25 p.m. This charge has not been found to be fully proved by the Enquiry Officer in his finding.

Thus it will be seen that this conclusion is based on no evidence. Rather it is based on presumption and assumption. When the attention of the authorised representative of

the bank was drawn towards this he too was unable to site any evidence in this regard. Hence the hard fact remains that reasons for disagreeing with the report of the Enquiry Officer on charge No. 4 are not based on evidence. It is well settled law that when any finding is based on no evidence it is palpably perverse. Hence, this finding is perverse. In my opinion in the capacity of clerk the concerned workman and A. N. Singh would have no hand in embezzlement of loan cheque. It is not known as to how it came in the possession of the concerned workman when it was despoiled by A. K. Pandey. Accordingly I am of the firm view that this charge has not been proved at all.

6. Next charge No. 1 may be considered. It has already been recited above. The pith and substance of this charge is that the concerned workman being an office bearer of the Union had exerted pressure upon the branch manager to render A. N. Mishra, officiating head cashier whose help was needed for withdrawal of Rs. 57,000 on the basis of destroyed cheque for Rs. 57,000. The Enquiry Officer had held that it was partly proved. The disciplinary authority on review has held that has been proved. I think both the Enquiry Officer and disciplinary authority have lost sight of distinction between exertion of pressure to get some work done and persuasion by making intreaties. A perusal of evidence of branch manager M. C. Mehrotra would go to show that he himself had admitted that the concerned workman had not exerted any pressure. Instead he was persuading and intreating him to accede to the request of A. N. Mishra to relief him. Thus according to own evidence of M. C. Mehrotra there was no exertion of pressure on the part of the concerned workman. As observed earlier both disciplinary authority and Enquiry Officer have not taken this fact into consideration hence I am of the opinion that the charge of exerting pressure was not proved at all.

7. Charge No. 2 is that the concerned workman on 3-10-85 had left the office at 2.25 pm. Both M. C. Mehrotra and R. D. Pandey management witnesses have not said anything to show that actually the wife of the concerned workman was not ill on 3-10-85. On the other hand the concerned workman WW-4 has stated that his wife was ill and that is why he had taken short leave. He had supported it by filing of two certificates. Thus the evidence of the concerned workman in this regard was un rebutted. Hence, it was established that the wife of the concerned was actually ill and no this account he had taken short leave. Hence I am of the opinion that this charge does not amount to misconduct at all and would not warrant any punishment.

8. Now charge No. 3 may be considered which deals for purchase of three drafts for Rs. 1,500 in favour of Bajaj Auto Limited. The Enquiry Officer has held that this charge has been partly proved. Disciplinary authority has agreed. I have gone through the reasoning considered by the disciplinary authority. In my opinion, having regard to evidence of defence witnesses the purchase of draft of Rs. 1500 was satisfactorily explained. Further I am of the view that Rs. 1500 is not abnormally huge amount and even in the year 1985 ladies belonging to the status of the concerned workman could produce this amount. Hence it cannot be said that purchase of draft for Rs. 1500 was disproportionate to the income of the concerned workman and in any case it cannot be linked with withdrawal of Rs. 57,300. Thus I am of the opinion that the finding of the Enquiry Officer in this regard was correct.

9 As a result of above discussion all the charges stands not proved. There will be no use in giving fresh opportunity to the bank as the management will again produce these very witnesses and finding will be the same. As such the concerned workman was wrongly punished on the basis of above finding. Consequently my award is that impugned punishment by way of stoppage of 4 increments is bad in law. As the concerned workman had no hand in the fraudulent withdrawal of Rs. 57,000 as such he will be entitled for release of all withheld amount on account of stoppage of four increments.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 26 मई, 1998

कां०आ० 1212.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबन्धनन्त के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-5-98 को प्राप्त हुआ था।

[सं० एल-12012/119/94-आई०आर० (बी०-II)]
पी० जे० माईकल, डेस्क अधिकारी

New Delhi, the 26th May, 1998

S.O. 1212.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Bank of India and their workman, which was received by the Central Government on 25-5-98.

[No. L-12012/119/94-IR (B-II)]
P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT PANDU NAGAR, KANPUR

Industrial Dispute No. 59 of 1994

In the matter of dispute :

BETWEEN :

General Secretary,
Bank of India Staff Association,
115-A Samar Vihar Near Chitragupta Nagar,
Alambagh Lucknow.

AND

Divisional Manager (Mandal Prabandhak),
Bank of India,
U. P. Mandal Nawal Kishore Road,
Lucknow.

AWARD

1. Central Govt. Ministry of Labour, vide Notification No. L-12012/119/94/I.R. B-2 dt. 26-7-94 has referred the following dispute for adjudication to this Tribunal :—

Whether the demand of Bank of India Staff Association Lucknow on the management of Bank of India, Lucknow for regularisation of services of Sri Prem Pal as Sepoy w.e.f. 2-5-88 is justified? If so what relief is the said workman entitled to?

2. The case of the concerned workman Prem Pal is that he was engaged as sepoy on 21-5-88 on a regular post at Kundarli Branch of the opposite party Bank of India. He worked as a daily rated worker. In that course earlier he was being paid Rs. 10/- per day. Lastly he was paid Rs. 30/- per day from June 1992. He had to work beyond 7½ hours per day. In the year 1992, he had worked for 254 days, hence he is entitled for regularisation as vacancy existed.

3. The opposite party has filed reply in which it has been alleged that the concerned workman had never worked as sepoy. Instead his father used to run a generator for the assistance of the bank. The concerned workman used to assist his father in this course. He had never worked for the bank. Hence, question of his regularisation does not arise.

4. In the rejoinder nothing new was alleged.

5. In support of his case, the concerned workman has filed ext. W-1 a letter of manager, Ext. W-2 statement prepared by office bearer of the union regarding number of working days, and ext. W-3 is the written statement filed by the bank before A.L.C.C. Dehradun. Further the concerned workman has examined himself as W.W.1 and Parmanand W.W.2. In rebuttal opposite party bank has examined Zahid Ali manager of the bank as M.W.2.

6. The only point which needs consideration is as to whether the concerned workman had worked as sepoy in a clear vacancy. Obviously the concerned workman had stated that he had worked like this. Parmanand an office bearer has stated that statement of working days as given in ext. W-2 are correct which he had prepared. Ext. W-1 is the document by which the manager has asked the dealer to supply diesel to the concerned workman for running the generator of the bank. In my opinion, instead of helping the concerned workman this paper helps the bank. Had the concerned workman been working as sepoy, he would have been mentioned like this in this letter. Failure to describe the concerned workman as sepoy militates against the concerned workman. No reliance can be placed on ext. W-2, the statement, as the person who had prepared it was admittedly not posted at this branch. If it was so how could he draw it.

7. Lastly, ext. W-3 in which it has been alleged that it may be possible that the manager would have taken some work from the concerned workman for cleaning the premises. In my opinion, it is not an admission. Instead possibility has been postulated. Further the manager of the bank has stated that there were already two peons by name Radhey Kishan and Hashmat Ali were working as sepoy at this branch, hence question of working of concerned workman as sepoy at this branch does not arise at all. I am inclined to believe the evidence of the management witness that the father of the concerned workman was having a generator with the bank which was run by the concerned workman. In that course if he did some work of the bank it will not confer the status of sepoy on the concerned workman.

8. Thus from the above evidence of the parties it emerges out that the concerned workman was never engaged as sepoy in the bank. Instead he had worked as generator operator on behalf of his father. Further it is not proved that any vacancy exist.

9. In view of all this the concerned workman is not entitled for regularisation. Accordingly he is not entitled for any relief.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 26 मई, 1998

कांआ० 1213.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुवन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-5-98 को प्राप्त हुआ था।

[सं० एल-12012/127/94-आई०आर० (बी० II)]

पी०जे० मार्शल, डेस्क अधिकारी

New Delhi, the 26th May, 1998

S.O. 1213.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government

Industrial Tribunal, Kanpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Bank of Baroda and their workman, which was received by the Central Government on 25-5-98.

[No. L-12012/127/94-IR (B-II)]

P. J. MICHEAL, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT PANDU NAGAR, KANPUR

Industrial Dispute No. 83 of 1994

In the matter of dispute :

BETWEEN :

R. L. Virmani, Assistant Secretary,
All India Bank of Baroda Employees Coordination
Committee C/o Bank of Baroda, K. G. Marg, New
Delhi

AND

Regional Manager Bank of Baroda,
Moradabad.

AWARD

1. Central Government Ministry of Labour, vide Notification No. L-12012/127/94-IR. B-2 dated 25-9-94, has referred the following dispute for adjudication to this Tribunal :

Whether the action of the management of Bank of Baroda, Moradabad in not employing Sri Devender Kumar Grover, Janta Deposit Collector/Godown Keeper on merger of the erstwhile Traders Bank into Bank of Baroda w.e.f. 13-5-88 is justified ? If not, to what relief is the workman entitled to ?

2. There is no dispute that there used to be exist Traders Bank Limited New Delhi. By notification dated 12-5-88, this Traders Bank was amalgamated with the opposite party Bank of Baroda. Sec. 10 of this notification says that all the employees of the transferer bank shall continue in service and be deemed to have been appointed by the transferer bank at the same remuneration and on the same terms and conditions of service as were available to such employees immediately before the close of business on 20-11-87.

3. On the basis of above condition the concerned workman has raised the instant industrial dispute with the averment that earlier he had worked with the erstwhile Traders Bank at Ghaziabad from 1981 to November 1982 as a godown keeper. Further he is working as Janta Deposit Collector w.e.f. 9-8-81 with the erstwhile Traders Bank Limited. In view of above provisions in the capacity of Janta Deposit Collector the concerned workman will be entitled for appointment in the opposite party bank. The opposite party is not giving him appointment to which he is entitled ?

4. The opposite party has filed reply. the pith and substance of the same is that the concerned workman was never the employee of the erstwhile Traders Bank at the time of amalgamation, hence he is not entitled for benefit of para 10 of the notification.

5. In the rejoinder nothing new has been alleged.

6. As far as the claim on the basis of having worked as Godown Keeper from April 1981 to Nov. 82 is concerned, his case cannot be considered on the ground that the concerned workman was admittedly not working as godown keeper on the date of merger.

7. As regards the claim on the basis of Janta Deposit Collector, in the first place such a claim is not covered by para 10 of the notification as Janta Deposit Collector was admittedly not an employee. Instead he was an commission agent. In this regard reference may be made to the case of Chirakadavus Co. OP. Bank Ltd. Versus Auth. under payment of subsistence allowance F.R.L. 1998' 78) F.I.R 662

in which it has been held that such commission agents are not employees as there is no relationship of master & Servant

8. In view of this case law it becomes further clear that the concerned workman was not an employee of the defunct bank and as such he cannot be deemed to be employee of the opposite party bank.

9. In view of above the claim of the concerned workman for appointment in the opposite party bank is not tenable. Hence my answer is against the concerned workman and consequently he is not entitled for any relief.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 26 मई, 1998

कांआ० 1214.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-5-98 को प्राप्त हुआ था।

[सं० एल-12012/243/95-आई०आर० (बी० II)]

पी० जे० माईकल, डेस्क अधिकारी

New Delhi, the 26th May, 1998

S.O. 1214.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Union Bank of India and their workman, which was received by the Central Government on 25-5-98.

[No. L-12012/243/95-IR (B-II)]

P. J. MICHEAL, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM LABOUR COURT, PANDU NAGAR, DEOKI PALACE ROAD, KANPUR

Industrial Dispute No. 14 of 1997

In the matter of dispute :

BETWEEN :

Raj Kumar Goel,
S/o. Roshan Lal,
13/356 Mohalla Mamubhanja,
Aligarh.

AND

Assistant General Manager,
Union Bank of India,
Bhagwan Talkies Crossing,
Agra

AWARD

1. Central Govt. Ministry of Labour, vide Notification No. I-12012/243/95/I.R. (B-2) dt. 30-12-96, has referred the following dispute for adjudication to this Tribunal :—

Whether the action of the management of Union Bank of India, Agra to voluntary retire from services w.e.f. 15-3-96, to Sri R. K. Goel sub staff Main branch Aligarh, is legal and justified. If not to what relief he is entitled ?

2. The concerned workman Raj Kumar Goel was working as peon-cum-waterman at Aligarh branch of the op-

posite party Union Bank of India w.e.f. 1995. In June 1992, he was promoted as bill collector. Later on he was transferred from Paththar Bazar Branch to Gandhi Eye Hospital extension counter of the bank on 26-5-93. He was again taken back at Aligarh branch on 8-6-93. After his joining branch manager insisted that the concerned workman should deposit Rs. 5500/- which he had taken for LFC and no account was given. In the mean time the applicant was not allowed to work. On 16-2-1995, the concerned workman was issued a letter by the branch manager about cessation of work w.e.f. 15-3-95 because of continuous absence and consequent deemed voluntarily retirement. In fact the applicant had never received such a letter. In any case this letter is illegal, hence his deemed cessation of work w.e.f. 15-3-95 is bad in law.

3. The opposite party bank has, inter alia, alleged that reference is bad on the ground that the date of deemed cessation of voluntarily retirement as given in reference order is 15-3-96. Hence, there is variance between the deemed cessation of work and date as given in reference order.

4. In the rejoinder the concerned workman in para 5 has conceded that there is such variance and he had approached the Govt. of India for necessary amendment.

5. From the above it will be seen that the date of termination as given in the reference order is wrong when the concerned workman was not removed on 15-3-96. Obviously this tribunal cannot go into the merits of such cessation of work because of specific provisions of section 10(4) of I.D. Act.

6. In view of above my award is that as there had been no cessation of work on account of voluntarily retirement on 15-3-96, it cannot be determined if this cessation is bad or not. Consequently the concerned workman is not entitled for any relief.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 26 मई, 1998

कांआ० 1215.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, बैंक ऑफ इंडिया के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-5-98 को प्राप्त हुआ था।

[सं० एल-12012/262/93-आई०आर० (बी० II)]

पी० जे० माईकल, डेस्क अधिकारी

New Delhi, the 26th May, 1998

S.O. 1215.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of India and their workman, which was received by the Central Government on 25-5-98.

[No. L-12012/262/93-IR(B-II)]

P. J. MICHEAL, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING
OFFICER, CENTRAL GOVERNMENT INDUS-
TRIAL TRIBUNAL-CUM-LABOUR COURT
PANDU NAGAR, KANPUR

Industrial Dispute No. 19 of 1994

In the matter of dispute

BETWEEN

A. K. Azariya, Secretary,
U.P.G.E.C. Works Colony,
Mandi Road, Daniyapura (Nandan),
Jhansi.

AND

Zonal Manager,
Bank of India,
U.P. Zone Mohini Mension,
Nawal Kishore Road,
Lucknow

Appearance :

V. K. Gupta for the workman M. K. Verma
for the Bank.

AWARD

1. Central Government Ministry of Labour, vide notification no. L-12012/26293/1.R. B-2 dated 4-3-94, has referred the following dispute for adjudication to this Tribunal--

“Whether the action of the management of Bank of India, Kanpur, in imposing a punishment of stoppage of two increments with cumulative effect on Sri N. K. Bhilware, Cash-cum-Accounts clerk vide order dated 22-6-91 is justified? If not what relief is the said workman entitled to?”

2. N. K. Bhilware was working as staff clerk at Jhansi Branch of the bank. Brief facts which preceded issuance of chargesheet are that the concerned workman was a member of Trade Union. On 21-10-1989, he had applied for leave from 23-10-89 to 27-10-89, in connection with Trade Union work. This leave application was declined by J. P. Awasthi, Assistant Manager, any how, the concerned workman went ahead with his tour. On 28-10-89 he came to attend his office and found that he has been marked absent from 23-10-89 to 27-10-89. It is alleged that on that day the concerned workman demanded from J. P. Awasthi as to why he has been marked absent which resulted in verbal altercation. On 20-11-89, a chargesheet to the concerned workman issued in the above back ground which runs as under—

Chargesheet

In exercise of the powers vested in the undersigned as disciplinary authority I have decided to initiate disciplinary proceeding action against you in respect of following acts of misconduct alleged to have been committed by you at our Bank's Jhansi Branch—

1611 GI/98--6

On 28-10-89 at about 10.10 a.m. you went to Sh. J. P. Awasthi Asstt. Manager of the branch at his seat and on being told by him upon your enquiry, the reasons for your being marked absent in the bank's attendance register from 23-10-89 to 27-10-89 you shouted at and abused Sh. J. P. Awasthi Asstt. Manager, threatened to tear his stomach and to break his hands/legs if he steps outside the branch and picked up a spike from the table to assault Sh. J. P. Awasthi.

Your aforesaid acts of shouting, abusing, threatening and assaulting Sh. J. P. Awasthi amounts to gross misconduct of a riotous, disorderly and indecent behaviour on the premises of the bank in terms of para 19.5 (C) of the bipartite settlement dated 19-10-66.

You are hereby directed to submit your written explanation in answer to the aforesaid charges levelled against you within five days of the receipt of the chargesheet failing which it shall be deemed that you have no explanation to submit.

You are hereby directed to acknowledge receipt of this chargesheet on the copies hereof.

Sd/-

Regional Manager
Kanpur Region
&
Disciplinary Authority

One V. S. Gupta was appointed enquiry officer. Later on this enquiry was taken up by S. C. Gupta. After concluding enquiry, the enquiry officer submitted his report on 8-4-91. Agreeing with this report the concerned workman was awarded punishment by way of stoppage of two increments with cumulative effect by order dated 22-6-91. Feeling aggrieved the concerned workman has raised the instant industrial dispute.

3. In the claim statement inter alia, the fairness and propriety of the domestic enquiry has been challenged by the concerned workman. It was further alleged that he had not adopted any threatening attitude against J. P. Awasthi.

4. In the reply it was maintained by the bank that the enquiry was fairly and properly held, and that the concerned workman did extend the threat to J.P. Awasthi, an officer of the bank.

5. On pleadings of the parties a preliminary issue regarding fairness and propriety of the domestic enquiry was framed as under—

“Whether the domestic enquiry conducted by the bank was fair and proper?”

6. I have gone through the enquiry report as well as proceeding. It was submitted on behalf of the workman that no opportunity to cross-examine the witnesses was given and further the finding is perverse.

7. From a perusal of chargesheet it will be found that it is not a case of documentary evidence. Instead the charge is based on factual allegations hence it after filing of papers no fresh opportunity was given to the concerned workman to cross-examine the witnesses it will not cause any prejudice to the concerned workman.

8. Now it will be seen if finding is perverse. In support of their case, the management has examined J. P. Awasthi, M.W.1, N. C. Nikhar M.W. 2, and S. C. Chaturvedi, Branch Manager, M.W. 3. In defence workman has examined S. B. Lahri, D.W. 1, Rajendra Pd. Ahirwar D.W. 2, G. Prasad D.W. 3, R. C. Malik D.W. 4 and the delinquent himself. It appears that there was controversy as to whether the concerned workman had applied for leave or not. In order to prove this fact the concerned workman has produced Ext. D. 1 a carbon copy of application alongwith the endorsement of refusal. The aforesaid three witnesses of the management with one voice had supported the contents of the chargesheet. On the other hand S. B. Lahri had proved the genuineness of Ext. D-1, the carbon copy of application. Remaining witnesses had also proved the event which happened on 21-10-89 as well as what transpired on 28-10-89. In my opinion there was no need to determine the controversy as to whether leave application was given on 21-10-89 or not as in either case the concerned workman would have been marked absent. Hence, the facts which happened on 21-10-89 are not germane to the present enquiry as far as the incident of 28-10-89. Even the workman witnesses have not disputed that the concerned workman had approached J. P. Awasthi for, ascertaining the reasons for marking him absent. All the three management witnesses have stated that the concerned workman did extend threat as contained in the chargesheet. Whereas the defence witnesses have stated that only heated arguments had taken place and thereafter the trade union workers had taken away the concerned workman from the table of J. P. Awasthi. They have not specifically denied that the concerned workman had not extend any threat to J. P. Awasthi. Even the concerned workman before the enquiry officer did not deny this fact. Thus the evidence of the management was almost un rebutted on this point. Apart from this the circumstances also speaks against the concerned workman. When he was marked absent naturally he would have been peeved and there is nothing surprising that in these state of affairs he would have extended such threat.

9. Hence taking over all matter, I think that the enquiry officer had taken the correct view of the matter and his finding is not perverse.

10. In this case as the punishment is less than dismissal or termination this tribunal in exercise of powers under sec. 11-A of I.D. Act had got no right to go into the quantum of punishment. Accordingly my award is that the punishment awarded to the workman by the bank was just and he is not entitled for any relief.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 26 मई, 1998

का०आ० 1226.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-5-98 को प्राप्त हुआ था।

[सं० एल-12012/310/93-आई०आर० (बी० II)]

पी० जे० माईकल, डेस्क अधिकारी

New Delhi, the 26th May, 1998

S.O. 1216.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 25-5-98.

[No. L-12012/310/93-JR(B-II)]

P. J. MICHEAL, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 22 of 1994

In the matter of dispute

BETWEEN

General Secretary,
Punjab National Bank,
Staff Association 165 Sohbatiya Bagh,
Allahabad.

AND

Regional Manager,
Punjab National Bank,
Chowk, Faizabad

AWARD

1. Central Government, Ministry of Labour, vide notification No. L-12012/310/93-JR. B-2 dated 2-3-94, has referred the following dispute for adjudication to this Tribunal—

“Whether the action of the management of Punjab National Bank Nonpara Branch in awarding punishment of stoppage of two increments with cumulative effect on Sri T. R. Pandey Cashier-incharge vide order dt. 2-3-90 is justified? If not, what relief is the workman entitled to?”

2. The concerned workman T. R. Pandey was working as cashier-incharge at Nonpara Branch in

District Bahraich of the opp. party Punjab National Bank. From 15-2-88, this workman was appointed as Special Assistant in leave arrangement. A Chargesheet dt. 1-11-88 was issued to him. According to this chargesheet 13 cheques were issued by M/s. Sarawati Kissan Sahkari Chini Mill dated 15-2-88 which was actually delivered to the payee on 16-2-88. The concerned workman attended the office on 16-2-88 which happened to be holiday on account of Shivratri and got the amount of the above mentioned cheque paid. This payment was shown to have been made on 15-2-88 whereas actually it was done on 16-2-88, hence there was antedating in the account book as well. In the next place it was alleged that he had cleared 5 cheques out of 8 cheques enumerated therein the value of each cheque is being more than 25000/- for which he was not authorised, to do. It is further alleged, that he had taken services of Barsati Lal, Daftari, on 16-2-88 in perpetrating these misconducts. A departmental misconduct was held in this matter and it was found that misconduct were proved vide finding dated 7-2-90. On this basis the concerned workman was awarded punishment by way of stoppage of two increments with cumulative effect by order dated 2-3-90. Feeling aggrieved the concerned workman has raised the instant industrial dispute. In the claim statement the fairness and proprietary of domestic enquiry was challenged. Further it was denied that he had done nothing wrong in this matter.

3. In the written statement it was maintained that the enquiry was fairly and properly held, hence a preliminary issue was framed which is as under—

“Whether the domestic enquiry conducted by the bank was fair and proper?”

Vide finding dated 8-1-97, it was held by this Tribunal that the enquiry was vitiated. Hence the management was given opportunity to prove the misconduct on merits.

4. Thereafter the management examined Moti Chand M.W. 1 as Manager of the bank, besides reliance was placed on extracts of ledger. In rebuttal the concerned workman T. R. Pandey examined himself as W.W. 1. The manager in his evidence has stated that actually the concerned workman had passed the cheques on 16-2-88 which was dated 15-2-88. In this way there was antedating. Further on 16-2-88, the concerned workman was not authorised to clear the cheques beyond Rs. 25000/-. However, he has not given any evidence regarding working of Barsati Lal on 16-2-88. In rebuttal the concerned workman has stated that he had made payments of cheques on 15-2-88. He has denied that he had come to bank on 16-2-88. He had also denied that he had passed cheque of the value of Rs. 25000/- on 16-2-88. He has also denied that he had taken help of Barsati Lal. One fact emerges out that actually the cheques were given by Chini Mill to the payee on 16-2-88. It is proved from the un rebutted evidence of the manager. If it is so obviously payments of these cheques could not have been made on 15-2-88. Hence I believe the version of the management in respect of charge No. 1. When the concerned workman has indulged in falsehood

in respect of charge No. 1, I disbelieve him in respect of charge No. 2 as well and accept the version of the bank. However, charge No. 3 regarding taking work from Barsati Lal has not proved for want of evidence.

5. In this way the two major misconducts against the concerned workman are proved. As the punishments less than dismissal, removal or discharge from service, this tribunal cannot go into the proportionality of quantum of punishment. Hence, my award is that the concerned workman was rightly punished and he was not entitled for any relief.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 26 मई, 1998

का०आ० 1217.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण—II, मुम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-5-98 को प्राप्त हुआ था।

[सं० एल-12012/318/95-आई०आर० (बी० II)]

पी० जे० माईकल, डेस्क अधिकारी

New Delhi, the 26th May, 1998

S.O. 1217.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal II, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of India and their workman, which was received by the Central Government on 25-5-98.

[No. L-12012/318/95-IR(B-II)]

P. J. MICHEAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT

INDUSTRIAL TRIBUNAL NO. 2

MUMBAI

PRESENT

SHRI S. B. PANSE

PRESIDING OFFICER

REFERENCE NO. CGIT-2/18 OF 1997

EMPLOYERS IN RELATION TO THE

MANAGEMENT OF BANK OF INDIA

AND

THEIR WORKMEN

APPEARANCE :

FOR THE EMPLOYER : Mr. L. L. D'Souza,
Representative.

FOR THE WORKMAN : Mr. V. H. Bhadha,
Representative.

Mumbai, the 6th May, 1998

AWARD PART-II

1. On 5th of February, 1998 by Part-I Award I came to the conclusion that the enquiry which was held against the workman is as per the principles of Natural Justice. Findings of the Enquiry Officer are not perverse and based on the evidence before her and that the management of the Bank had jurisdiction to take cognisance of a private complaint which was of an employee in an employee employer relationship.

2. Now, in this Award I have to answer the remaining issues namely; Issue No. 3 and 4. The issues and my findings there on are as follows :

Issues

Findings

3. Whether the action of the management of Bank of India in dismissing Shukla Special Assistant from service w.e.f. 4-7-94 is legal and justified ?

: YES

4. If not, what relief is the said : Does not
workman entitled to ? survive.

REASONS

3. The facts giving rise to the present dispute can be summarised in nutshell as follows : Mr. Prakash Shukla, the workman is an employee of Bank of India. He is an active member, Office bearer of the Union. He is one of the leading union activists and fighting for the cause of the Union.

4. On 12-3-1993 a charge sheet was issued to him. The just of the charge sheet is as follows :

"By misusing your position as General Secretary of Bank of India Staff Union, Pune, you solicited Smt. Arti Sanjay Karlekár, a staff-clerk of Banks' Chakan Branch quite often in order to satisfy your passion against her will and without her consent. From August 1991 to Sept. 1992 by adopting various methods of pressure tactics and intimidation, thereby causing continuous harassment and injury to her mind and reputation, resulting in her failure to concentrate on official work and consequently reducing her efficiency in discharge of her official duties as well as affecting her peaceful family life, which is incompatible with good conduct and thereby putting the bank into embarrassing position as it is having direct bearing/nexus and correlation on the working of the staff and the organisation and, therefore, prejudicial to the interest of the Bank."

5. A domestic inquiry was conducted against him. The Inquiry Officer found him guilty in res-

pect of charges which were levelled against him. She reported accordingly. The disciplinary authority thereafter following the usual procedure awarded the punishment of dismissal, w.e.f. 4-7-1994. The workman raised several contentions in respect of the domestic inquiry including that of it was against the principle of Natural Justice and the findings of the Inquiry Officer are perverse.

6. The management asserted regarding the legality and correctness of the inquiry and finding of the Inquiry Officer had asserted its right to look into the private complaint filed by its employee against the other employees of the Bank. It is pleaded that the action which was taken by it was as per the procedure and legal.

7. The Tribunal had given its findings on a preliminary issue which I have referred to in the beginning of the Award.

8. Mr. Prakash Shukla (Ex. 78) the workman affirmed that his service record is clean. He asserted that he used his influence for the benefit of the Bank. So far as these things are concerned the management had not seriously disputed. I have no reason to disbelieve the workman for coming to the conclusion that he is a influential personality and must have helped the Bank management for total uplifting of the business of the Bank. He affirmed that while awarding the punishment the Bank did not consider these aspect of the Bank.

9. The workman affirmed that since his dismissal he is unemployed and not earning anything. He also produced intimation under section 143(1)(a) of the Income Tax Act issued to him by the Income Tax Officer dt. 27-3-98. It depicts that he has no source of income. The management had not adduced any oral evidence or documentary evidence to show that the workman is gainfully employed. Under such circumstances I hold that after dismissal the workman is not earning anything.

10. The management had produced charge sheet which was issued to the workman. It is dated 3rd May, 1994 (Ex.-79/1). Admittedly, the charge sheet was kept in abeyance. I do not find any reason to give any weightage to the same charge sheet while considering the correctness of the punishment.

11. Mr. Kelawala, the learned representative for the workman argued that due to the act of the workman the Bank had not suffered any monetary loss. That might be a factual position. He further submitted that in the case of Scooter India Ltd. vs. Labour Court, Lucknow 198 (73) FJR 515 (SC) it is observed that Justice should be tempered with mercy.

12. Mr. D'Souza, the learned representative for the management argued that so far as application of Scooter India Ltd is concerned the facts are quite different and the act which is on the part of the worker is of moral turpitude and therefore the punishment which is awarded is perfectly legal and justified. He also submitted that question of showing merely arises only when there are minor misconducts. Looking to the gravity of the major

misconduct which was conducted by the workman the punishment awarded to him cannot be said to be unjustified. While passing Part-I Award, I have given detailed reasons how the lady employee was harassed by the workman or his desires. The whole attitude of the worker is that the action which was committed by him, namely soliciting the lady clerk to satisfy his passion against her will and without her consent cannot be said to be a major misconduct. I really fail to appreciate this. I came to the conclusion that the charges which were levelled against him were proved. Looking to the graveness of the charges even if it is said that the workman had excellent past career that cannot save him from the major punishment of dismissal. If leniency is shown in such type of misconducts then it is very difficult for lady employees to work anywhere. Such attitude must be nibbed into bud so others will take lesson from it and will not indulge in committing such type of misconduct.

13 The learned representative for the workman in his written argument Ex 32, had also referred to certain other aspects of the matter namely: of not supplying copy of the Inquiry Officer's report, and that the inquiry was against the principle of Natural Justice. These points now cannot be considered in this award. They are already considered by the tribunal in Part-I award. For all these reasons, I record my findings of the points accordingly and pass the following order.

ORDER

The action of the management of the Bank of India, Pune in dismissing Shri Prakash V. Shukla, Special Assistant, Main Branch, Pune from service w.e.f 04-7-94 is legal and justified

S. B. PANSE, Presiding Officer.

नई दिल्ली, 26 मई, 1998

कांआ० 1218.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनरा बैंक के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-5-98 को प्राप्त हुआ था।

[सं० एल-12012/326/95-आई०आर० (बी०-II)]

पी० जे० माईकल, डेस्क अधिकारी

New Delhi, the 26th May, 1998.

S.O. 1218.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Canara Bank and their workman, which was received by the Central Government on 25-5-1998.

[No. L-12012/326/95-IR (B-II)]

P. J. MICHEAL, Desk Officer

ANNEXURE

BEFORE SHRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR, KANPUR.

Industrial Dispute No. 117 of 1996.

In the matter of dispute :

BETWEEN :

Pramod Kumar, S/o. Kunwar Pal Singh C/o. Kunari Minu Soni, 118/78, Kaushalpuri, Kanpur.

AND

Regional Manager,
Canara Bank,
71, M. G. Road,
Agra.

AWARD

1. Central Government, Ministry of Labour, New Delhi, vide Notification No. L-12012/326/95-I.R. (B-2), dated 12-12-1996, has referred the following dispute for adjudication :—

“Whether the action of the management of Canara Bank in terminating the services of Shri Pramod Kumar w.e.f. 21-3-1995 is justified and legal? If not, to what relief the workman is entitled to?”

2. The case of the concerned workman Pramod Kumar is that he was engaged as peon/water-boy/coolie at Rampur Nagar, Branch of the opposite party Canara Bank on 1-4-1995. He continuously worked with the opposite party bank upto 20-3-1995 at different branches like Bakhla, Jaipur House Colony, Agra, Bhaipur Agra and Sadar Bazar Branch Firozabad. He had completed 240 days in a year preceding the date of termination. He was not paid retrenchment compensation and notice pay hence his termination is bad in Breach of provisions of section 25-F of I. D. Act. Besides there had also been breach of provision of sections 25-G and H of I. D. Act.

3. The opposite party has filed reply in which it has been alleged that the concerned workman was never engaged as a peon coolie. Instead he used to be engaged in leave vacancies and when necessary. Some times he was also engaged to meet the urgent work. He had also worked as water-boy during summer season. He did not work continuously on any regular post. In any case, he had not completed 240 days in a year preceding the date of his termination. There had been no breach of provisions of sections 25-G and H of I. D. Act.

4. In the rejoinder it has been denied that the concerned workman was engaged in leave vacancy or as water boy.

5. In support of his case, the concerned workman has examined himself as WW1 besides he had filed Ext. W-1 to W-42. In rebuttal there is evidence of the manager Bala Subraminiyam M.W. 1. Further there is joint inspection report on record.

6. First it will be seen if the concerned workman had continuously worked from 1-4-1985 to 20-3-1985. The concerned workman Pramod Kumar W.W. 1 had stated like this. This fact has been denied by the manager M.W. 1. There is joint inspection report which goes to show that the concerned workman had not worked continuously. Instead he had worked intermittently. Besides there are documents filed by the concerned workman which go to show that concerned workman had not worked continuously. Ext. W-8 is the letter by which the concerned workman was sponsored by the employment exchange. Ext. W-11 is the letter written by senior manager dated 28-4-1986 by which the manager had written to H. O. informing that Panna Lal has resigned as part-time employee. The concerned workman had applied. He had worked for two years as water boy, hence he may be engaged. Ext. W-12 is the copy of letter dated 11-1-88 by which the manager had requested the Head Office to permit him to engage the concerned workman as part-time employee till permanent appointments made. Ext. W-15 is the letter dated 11-12-1988 by which the manager had again recommended the case of the concerned workman to engage him as a daily wager when any staff goes on leave. Ext. W-18 is reminder in this regard, dated 13-6-1990. Ext. W-28 is the letter dated 30-7-1991 by which the concerned workman has been asked to collect stationery. From all these documents it emerges out that the concerned workman was used to be engaged on some work or through casual nature. He was never engaged to do any work of permanent nature or on any permanent post. Hence my finding is that the concerned workman was not engaged on any permanent post.

7. The second point which calls for consideration is as to whether the concerned workman had completed 240 days in a year preceding the date of termination i.e. 21-3-1995. Once again concerned workman Pramod Kumar W. W. 1 has tried to prove this fact and Bala Subramaniam has denied it. However there is original branch inspection note dated 8-12-1997 on record which going to show that register of Sadar Bazar Firozabad branch between 1-11-1993 to 20-3-1995 was not available. No explanation has been given by the management as to what happened to this register. It is the positive case of the concerned workman that he had worked at Firozabad Branch during the last one year. As such it was necessary for the management to have filed the register to show the number of working days of the concerned workman. In its absence drawing adverse inference against the management, I believe the evidence of the concerned workman and hold that the concerned workman had completed 240 days in a year preceding the date of retrenchment. Admittedly no retrenchment compensation and notice pay has been given, hence this termination is bad being in breach of provisions of section 25-F of I. D. Act.

8. Any way the concerned workman will not be entitled for reinstatement as he had not worked on any permanent post. Instead his services were utilised some times as a part time employee, some times as water boy and some time as coolie. Further from the evidence of Balasubramaniam it emerges

out that he had already been full time coolie at this branch. Under these circumstances the concerned workman cannot be ordered to be reinstated in service. He will be entitled for compensation in lieu of reinstatement.

9. In view of above my award is that the termination is bad and in lieu of reinstatement the concerned workman will be entitled for Rs. 10,000/- as compensation.

B. K. SRIVASTAVA, Presiding Officer.

नई दिल्ली, 26 मई, 1998

का०आ० 1219.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनरा बैंक के प्रबन्धतन्त्र के सम्बन्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-5-98 को प्राप्त हुआ था।

[सं० एल-12012/351/95-आई०आर० (बी० II)]

पी० जे० माईकल, डेस्क अधिकारी

New Delhi, the 26th May, 1998.

S.O. 1219.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Canara Bank and their workman, which was received by the Central Government on 25-5-1998.

[No. L-12012/351/95-IR (B-II)]

F. J. MICHEAL, Desk Officer

ANNEXURE

BEFORE SHRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 25 of 1997.

In the matter of dispute :

BETWEEN :

Mahesh Chandra C/o. Ramhar Singh, Village Mukhrayan, Post Atrauli, District Agra

AND

Regional Manager, Canara Bank, Aligarh.

AWARD

1. Central Government Ministry of Labour, vide Notification No. L-12012/351/95-I.R. (B-2), dated 31-12-1996 has referred the following dispute for adjudication to this Tribunal :—

"Whether the action of the management of Canara Bank Aligarh to terminate the services of Shri Mahesh Chand w.c.f. 29-9-1992 is legal and justified? If not to what relief the workman is entitled?"

2. The case of the concerned workman Mahesh Chandra is that he was engaged as messenger-cum-peon on 1-6-1991 at Atrauli Branch District Aligarh of the opposite party Canara Bank and he continued to work upto 29-9-1992 as daily rated worker. In this case he has completed more than 240 days in a year. As no retrenchment compensation and notice pay was given, his termination is bad being in breach of provisions of section 25-F, G and H of I. D. Act.

3. The opposite party bank has filed reply in which it has been alleged that the concerned workman was not engaged as peon-cum-messenger. Instead he used to be engaged as water boy as and when necessary. In the year 1991 he had worked for 79 days whereas in the year 1992 he had worked for 98 days. These working days relate to summer season when water is required. In this way the concerned workman is not a workman at all as envisaged by section 2(s) of I. D. Act.

4. In support of his case, the concerned workman has examined himself as Mahesh Chandra W.W. 1 besides he has filed Ext. W-1 debit slip dated 29-9-1992. In rebuttal the opposite party bank has examined S. N. Jain, M.W. 1 besides Ext. M-1 to M-10 debit slips have been filed.

5. The first point which calls for determination is as to whether concerned workman was engaged as a peon or as a water boy. Naturally both the witnesses have supported their rival versions. The concerned workman in his cross examination has further admitted that at that time one peon Dinesh by name was already working there. Further the debit slips filed by the management go to show that the concerned workman was shown as water boy. Further from this debit slips it also emerges out that the concerned workman worked during the summer season. When there was already a peon at this small branch there was no question of engaging another peon. Further the period for which the concerned workman has worked has been established by the debit slips. It further emerges out that the concerned workman was engaged as water boy in summer season as a daily rated worker. In view of above I accept the version of the bank and hold that the concerned workman had not worked as peon. Instead he used to be engaged as water boy in summer season on daily rated basis. Surely such a workman cannot be termed as a workman under sec 2(s) of I. D. Act. I am further of the view that such daily rated worker who is engaged during summer season is not entitled for benefit of section 25-F, G and H of I. D. Act. In any case on merits too it has been established that the concerned workman had not completed 240 days in any year and further no fresh hands were engaged or junior to him were retained in service.

6. Hence, my Award is that discontinuance of the service of the concerned workman by the manage-

ment is not bad and the concerned workman is not entitled for any relief.

B. K. SRIVASTAVA, Presiding Officer.

नई दिल्ली, 26 मई, 1998

का०आ० 1220.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनिन बैंक ऑफ इंडिया के प्रबन्धतन्त्र के सम्बन्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-5-98 को प्राप्त हुआ था।

[सं० एल-12012/368/94-आई०आर० (बी०-II)]

पी. जे. माईकल, डेस्क अधिकारी

New Delhi, the 26th May, 1998

S.O. 1220.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Union Bank of India and their workman, which was received by the Central Government on 25-5-98.

[No. L-12012/368/94/IR(B-II)]

P. J. MICHEAL, Desk Officer

ANNEXURE

BEFORE SHRI B.K. SRIVASTAVA PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DEOKI PALACE ROAD PANDU NAGAR, KANPUR

Industrial Dispute No. 73 of 1995

In the matter of dispute between :

State Vice President
U.P. Bank Employees Congress
295/387 Deen Dayal Road
Ashrafabad Lucknow

AND

General Manager
Union Bank of India
Z.O. Sharda Towers
Kapoorthla Complex, Aliganj
Lucknow.

APPEARANCES :

Shri B. P. Saxena for the Workman
Shri S. N. Mehra for the Management

AWARD

1. Central Government Ministry of Labour New Delhi vide its Notification No. L-12012/368/94 dated

16-6-1995 has referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management of Union Bank of India, Lucknow in not allowing Sri Satish Chandra Shukla, Clerk-cum-Cashier to resume his duties w.e.f. 9-1-93 is legal and justified ? If not what relief is the said workman entitled to ?”

2. The case of the concerned workman S. C. Shukla is that he was working as Clerk Cum Cashier at Saidraja Branch Varanasi of the opposite party Union Bank of India. He was issued a charge sheet dated 26-7-88 on the basis of which a domestic enquiry was held and finding was recorded by the enquiry officer on 5-4-1989. There after nothing was done by disciplinary authority. In April, 1990 the concerned workman fell ill hence he applied for leave. Ultimately after recovery from illness he went to join on 9-1-1993. The management of the Bank did not permit him. There after workman applied to Regional Manager and Zonal Office of the Bank. Ultimately Regional Manager Office asked the branch to allow the concerned workman to join on 8-4-1993. Still he was not allowed to join which is illegal. Thus the management was wrong in not allowing him to join on 9-1-1993.

3. The opposite party bank has filed reply. In which it has been alleged that the concerned workman is a habitual defaulter remaining absent from duty without leave. He had committed this misconduct in the past as well. This time too he remained absent without any application. Ultimately after negotiation he was allowed to join, provided he would not claim back wages for the period he remained absent. As the concerned workman did not agree to forego this claim he was not allowed to join.

4. In the rejoinder nothing new has been alleged.

5. The only question which require consideration is as to whether the concerned workman was actually ill for the last three years before 9-1-1993 and did he apply for leave.

6. S. C. Shukla WW(1) has stated that he was ill. In his cross examination he has stated that he had apply for leave but its copy had not been filed. On the other hand S. N. Mehra MW(1) has denied this fact. If actually the concerned workman was ill he would have under gone treatment. He should have filed prescription of Doctor and the copy of leave application. In its absence I am not inclined to believe his version. Accordingly my finding is that the concerned workman was not ill during this period and he had also not applied for leave. Consequently my finding is that the management bank was justified in not allowing the concerned workman to join unless he would agree to forego his back wages on the principle “No work no pay”.

7. In view of above my award is that opposite party Bank was justified in not permitting the concerned workman to join duty w.e.f. 9-1-1993, Consequently he is not entitled for any relief.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 26 मई, 1998

का०आ० 1221.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केंद्रीय सरकार बैंक ऑफ इंडिया के प्रबन्ध तन्त्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केंद्रीय सरकार को 25-5-98 को प्राप्त हुआ था।

[सं० एल-12012/389/92-आई०आर० (बी० II)]

पी० जे० माईकल, डेस्क अधिकारी

New Delhi, the 26th May, 1998

S.O. 1221.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of India and their workman, which was received by the Central Government on 25-5-1998.

[No. 12012/389/92-IR(B-II)]

P. J. MICHEAL, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT PANDU NAGAR, KANPUR

Industrial Dispute No. 36 of 1993

In the matter of dispute between :

General Secretary,
Bank of India Staff Association
115 P Samar Bihar Colony Alambagh
Lucknow.

AND

Regional Manager
Bank of India
Virendra Smriti
Civil Court Road
Civil Lines Kanpur.

AWARD

1. Central Government, Ministry of Labour, vide notification no. L-12012/389/92-I.R.B.II dated 26-3-1993, has referred the following dispute for adjudication to this Tribunal :—

“Whether the demand of Bank of India Staff Union, Lucknow that Sri Ram Sewak should be regularised in the service of bank of India w.e.f. 1-5-83 with consequential benefits is justified ? If so, what relief, is Shri Ram Sewak entitled to ?”

2. The case of the concerned workman is that he has worked as sepoy from 1-5-1983 at Bilgram branch

of the opposite party Bank of India. From 1983 to 1993 he has worked intermittently the details of which have been given in para 6 of the claim statement. In the year 1992 he claims to have worked for 205 days whereas in the year 1993 for 118 days. He has further stated that he was a daily rated worker. Lastly he was being paid at Rs. 25 per day. He was asked to work for whole day. As he has worked for so many years, he is entitled for regularisation. Still the bank illegally terminated his services, on 18-12-1993.

3. The opposite party bank has filed reply in which it was alleged that the concerned workman used to be engaged as casual labour for meeting day to day work. He was never engaged as sepy. He had worked for only 1986 days from December 1983 to August, 1991, the details of which have been given in para six of the written statement. In the last year he had worked only for 3 days. As he was a contingent employee question of his regularisation does not arise.

4. In support of his case, the concerned workman has examined himself as W.W-1 and Parmanand as W.W.-2 In rebuttal management has examined S. P. Pandey M.W.-1 and S. D. Shukla M.W.-2. Besides concerned workman has filed papers W-1 to W-4 to show the entries of work of the concerned workman.

5. Having heard both sides and having gone through the record I am of the opinion that the reference has to be answered against the concerned workman for two legal defects. In the first place the concerned workman himself has admitted that he has been removed from service in this way he is no longer in service. There is no question of regularisation of his service which has ceased to exist. In the second place, the management has referred to the case of Oil & Natural Gas Commission Karmchhari Union versus Oil & Natural Gas Commission and another 1998 FLR (98) summary of cases page 13, in which it has been held that a contingent employee is not entitled for regularisation as regularisation is dependant on existence of vacancy. In the instant case, it is own admission of the concerned workman that he is a daily rated worker and has not worked continuously hence he has to be treated as contingent employee. Further there is no evidence on record to show that no vacancy had existed when reference was claimed.

5. In its absence the concerned workman would not have been entitled for regularisation, even if he would have remained in service. Hence my award is that the concerned workman is not entitled for regularisation. Consequently he is also not entitled for any relief.

B. K. SRIVASTAVA, Presiding Officer
नई दिल्ली, 26 मई, 1998

कांआ० 1222.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनाइटेड इंडिया इन्सुरेंस कं० लि० के प्रबन्धतन्त्र के सम्बन्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-5-98 को प्राप्त हुआ था।

[सं० एल-17012/6/94-आई०आर० (बी० II)]

पी० जे० मारिकल, डैस्क अधिकारी

New Delhi, the 26th May, 1998

S.O. 1222.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of United India Insurance Co. Ltd., and their workman, which was received by the Central Government on 25-5-98.

[No. L-17012/6/94 IR(B-II)]

P. J. MICHEAL, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING
OFFICER, CENTRAL GOVERNMENT INDUS-
TRIAL TRIBUNAL-CUM-LABOUR COURT
KANPUR

Industrial Dispute No. 58 of 1994

In the matter of dispute between :

R. Arora, District Secretary, General Insurance
Employees Association C/o United India
Insurance Company Limited D.O. II Gumti
Plaza Gumti No. 5, Kanpur.

And

Regional Manager, United India Insurance Com-
pany Limited, Regional Office, Kapoorthaia
Complex, Aliganj, Lucknow.

APPEARANCE : O. P. Mathur for the workman and

R. P. Tripathi for the Management.

AWARD

1. Central Government, Ministry of Labour, vide notification No. L-17012/6/94-IR.B.-2 dated 26-7-1994, has referred the following dispute for adjudication to this Tribunal—

Whether the action of the management of United India Insurance Company Limited Lucknow in not including the name of Sri C. P. Soni, Assistant in the selection list for promotion as Assistant Administrative Officer is justified? If not, what relief is the said workman entitled to?

2. The case of the concerned workman C. P. Soni is that he is working as permanent Assistant with the opposite party United India Insurance Company Limited. The officer as the opposite party harbour ill will against him hence he was not assigned proper seniority. Further, he was wrongly punished on the basis of departmental enquiry. In respect of both these matters he has raised I.D. No. 84 of 1996 which is still pending. During the pendency of this reference some promotions were to be made to the post of Assistant Administrative Officer (hereinafter referred to as AAO for the sake of brevity). He had applied for the same in 1994, but his name was not included in the list from which the post of AAO was to be filled. In other words his name was not considered. His case is that all these have been done due to malice. He is qualified for the post but one V. K.

Nanda who is junior to the concerned workman has been promoted to this post. In this way the opposite party has erred in not including the name of concerned workman in the selection list for the promotion of AAO.

3. The case of the opposite party is that the concerned workman was promoted to the post of Senior Assistant but he failed to join. In October 1993, he was working only as Assistant hence he was not eligible for being considered for promotion to the post of AAO as according to rules Senior Assistants, Superintendents and Stenographers, the details of which have been given in para 30(b) of the Staff Regulation are entitled. In the second place it was alleged that the concerned workman was punished after holding departmental enquiry hence his name was not considered.

4. In the rejoinder, no specific reply has been given to the objection of opposite party company that the concerned workman was not working as Senior Assistant, hence his name was not considered. Instead in a vague term it has been alleged that the concerned workman was eligible.

5. In support of his case, the concerned workman has examined himself as C. P. Soni W.W.1 besides he has filed Ext. W-1 to W-13, whereas management has examined R.N. Arora as M.W.1- besides it has filed Ext. M-1 to M-24.

6. The first point which calls for consideration is as to whether the concerned workman was illegally not promoted as Senior Assistant. I have no hesitation in answering this issue against the concerned workman. The concerned workman in his cross examination has admitted that he was promoted as Senior Assistant but he had not joined. Besides there are Ext.M-1 to M-5 which go to show that the concerned workman was promoted on 16-7-1990, 20-6-1991 and 26-8-1992 as Senior Asstt. but each time he refused to join on the plea that he should be retained at Kanpur. This request was not acceded. This plea of the concerned workman that he was not promoted as Senior Assistant is factually not correct. Apart from this in I.D. No. 94 of 1991, there was specific reference about the justification on the part of the management in not promoting workman. In the award dated 5-3-1997 this issue was decided against the concerned workman. Hence on this basis too this point is to be decided against the workman.

7. The second point is as to whether the concerned workman was wrongly not considered for the promotion as AAO in October, 1993. Para 30 of the Policy of Supervisory, clerical and subordinate staff promotions lays down that all Superintendents, Senior Asstts. and Stenographers as enumerated in this para are eligible for being considered for promotion to the cadre of A.A.O. Certainly the concerned workman was not working as Senior Assistant in October, 1993. Instead before that he forgone these promotions by refusing to join at various places where he was asked to join thrice on different dates. Hence, he was ineligible as such management was right in not considering his name after rejecting his application.

8. The plea that junior to him were promoted will have no substance when Nanda against whom grie-

vance has been ventilated was admittedly qualified. If he was promoted it will not amount to discrimination. It is true that the concerned workman was punished after holding domestic enquiry he had raised I.D. No. 94 of 1991 challenging this punishment. Vide award dated 5-3-1997 it has been held that this punishment was wrong still it will have no adverse effect as the concerned workman was suffering from the blot of punishment when the matter has been considered for promotions to the post of AAO. The authorised representative of the concerned workman has drawn my attention to para 18(i) of the promotion policy which says that an employee will suffer from the vice of ineligibility only for the period of one year as far as question of promotion is concerned. Because of this provision I would say that the concerned workman was not ineligible on this score. Any way as he was not working as Sr. Assistant he had no right to be considered for promotion as Assistant.

9. In view of above discussion my award is that the opposite party company was justified in not considering the concerned workman for promotion as AAO in October 1993. As such he is not entitled for any relief.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 21 मई, 1998

कांआ० 1223.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार हाईटेक ड्रिलिंग सर्विसेज इंडिया लि० के प्रबन्धन के सम्बन्ध में निम्नलिखित औद्योगिक विवाद में औद्योगिक अधिकरण, जोधपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-5-98 को प्राप्त हुआ था।

[सं० एल-30012/19/96-आई०आर० (सी I)]

अजय कुमार, अनुभाग अधिकारी

New Delhi, the 21st May, 1998

S.O. 1223.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jodhpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Hitech Drilling Services India Ltd., and their workman, which was received by the Central Government on 20-5-98.

[No. L-30012/19/96-IR (C-I)]

AJAY KUMAR, Section Officer

अनुबंध

श्रम न्यायालय, जोधपुर

पीठासीन अधिकारी : श्री चांदमल तोतला, ग्रा.एच. जे.एस.
श्री. विवाद (केन्द्रीय) संख्या : 9/1997
श्री भंवर सिंह पुत्र श्री गायर सिंह निवासी - 284, बी. जे.
एस. कालोनी, जोधपुर। प्रार्थी

बनाम

एडमिनिस्ट्रेटिव मैनेजर हाईटेक ड्रिलिंग सर्विसेज इंडिया लि.
310, प्रकाश दीप बिल्डिंग, टोल्सटोय मार्ग, नई दिल्ली।

... अप्रार्थी

उपस्थित :—

- (1) प्रार्थी स्वयं उपस्थिति।
- (2) अप्रार्थी की ओर से श्री गोहर हुसैन प्रतिनिधि उप०

अधिनियम

दिनांक 7-4-1998

श्रम मंत्रालय, भारत सरकार, नई दिल्ली ने अपनी अधिसूचना सं. 30012/19/96 दिनांक 29-3-96 से श्रमिक व उसके नियोजक के मध्य उत्पन्न हुआ निम्नांकित श्रम विवाद औद्योगिक विवाद अधिनियम की धारा 10 के अन्तर्गत अधिनियम हेतु इस श्रम न्यायालय को प्रेषित किया जो दिनांक 15-11-1997 को नियमित औद्योगिक विवाद सं. 9/97 पंजीबद्ध हुआ :—

“Whether the action of the management of Hitech Drilling Services India Ltd., New Delhi in terminating the services of Shri Bhanwar Singh Son of Shri Gayar Singh of Jodhpur w.e.f. 30-11-1993 is legal and justified? If not, to what relief is the concerned workman entitled?”

आज प्रार्थी भंवर सिंह ने स्वयं उपस्थित होकर एक आवेदन इस आशय का पेश किया कि उसका अप्रार्थी नियोजक से सैटलमेंट हो गया है अतः वह यह प्रकरण अब चलाना नहीं चाहता तथा उसका अप्रार्थी नियोजक से कोई लेन-देन शेष नहीं रहा है अतः अब यह प्रकरण खत्म कर दिया जावे। अप्रार्थी नियोजक की ओर से प्रार्थी को दी गई राशि की रसीद, प्रार्थी का प्रार्थना पत्र चैक व समझौते की रकम पेश की हैं। अतः उक्त तथ्यों एवं परिस्थितियों को देखते हुए इस प्रकरण में नो-डिस्प्यूट एवार्ड पारित किया जाना चाहिये।

अधिनियम

अतः श्रम मंत्रालय, भारत सरकार, नई दिल्ली द्वारा प्रेषित औद्योगिक विवाद स्वयं प्रार्थी के आवेदन अनुसार वह चलाना नहीं चाहता है तथा प्रार्थी व अप्रार्थी नियोजक के मध्य अब कोई लेन-देन बाकी नहीं रहा है तथा प्रार्थी अब इस प्रकरण को चलाना नहीं चाहता है इन सब तथ्यों को देखते हुए इस प्रकरण में कोई विवाद नहीं रह जाने का अधिनियम (नो-डिस्प्यूट एवार्ड) पारित किया जाता है। इस अधिनियम को प्रकाशन हेतु श्रम मंत्रालय, भारत सरकार, नई दिल्ली को प्रेषित किया जावे।

यह अधिनियम आज दिनांक 7-4-1998 को खुले न्यायालय में हस्ताक्षर कर सुनाया गया।

चौधमल तोतला पीठासीन अधिकारी

नई दिल्ली, 21 मई, 1998

का.आ. 1224.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओ. एन. जी. सी. के प्रबंधन के संबंध निम्न-

जको और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जोधपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-5-98 को प्राप्त हुआ था।

[सं एल-20040/26/95-आई आर (सी-I)]

अजय कुमार, अनुभाग अधिकारी

New Delhi, the 21st May, 1998

S.O. 1224.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jodhpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of O.N.G.C. and their workman which was received by the Central Government on 20-5-98.

[No. L-20040/26/95-IR (C-I)]

AJAY KUMAR, Section Officer

अनुबंध

श्रम न्यायालय, जोधपुर

पीठासीन अधिकारी :—श्री चान्दमल तोतला, आर.एच. जे. एस औद्योगिक विवाद (केन्द्रीय) नंबर :—7/96

- (1) शाखा सचिव, ओ.एन. जी. सी. एम्प्लॉईज मजदूर सभा उम्मेद निवास रातानाडा, जोधपुर

... प्रार्थी

- (2) प्रसीडेंट, ओ.एन. जी. सी. एम्प्लॉईज एसोसिएशन उम्मेद निवास रातानाडा, जोधपुर

... प्रार्थी

बनाम

उप महाप्रबंधक (ई) एक्सप्लोरेशन बिजीनेस ग्रुप/ ओ.एन. जी. सी. लि. उम्मेद निवास रातानाडा, जोधपुर।

उपस्थित :—

- (1) प्रार्थी की तरफ से कोई हाजिर नहीं।
- (2) अप्रार्थी की तरफ से कोई हाजिर नहीं।

अधिनियम

दिनांक 12-1-98

श्रम मंत्रालय, भारत सरकार के आदेश संख्या एल.— 20040/26/95-आई. आर. (सी. 1) दिनांक 4 सितम्बर 1996 श्रमिक के मध्य उत्पन्न हुआ। अधिनियम हेतु श्रम न्यायालय को प्रेषित किया गया है। जो इस प्रकार है

“Whether the action of the management of ONGC Ltd., through Dy. General Manager (E) of O.N.G.C. Ltd., Rajasthan Project, Jodhpur in Changing the service conditions vide Notice dated 5-8-1994 for payment of Daily Allowance is legal and justified? If not, to what relief is the concerned workman entitled?”

यह नियमित श्रम प्रकरण पंजीबद्ध हुआ तथा इसकी सूचना दोनों पक्षकारों को दी गयी। दोनों पक्षों को दिनांक

3-2-97 को न्यायालय में उपस्थित होने या प्रतिनिधित्व करने की सूचना मिली तथा दोनों पक्षों के प्रतिनिधि दिनांक 3-2-97 को न्यायालय में उपस्थित हुए तथा इसके पश्चात् 26-5-97 की तिथि को तथा उसके बाद की सात तिथियों में किसी भी पक्ष का कोई प्रतिनिधि उपस्थित नहीं श्रेया अतः यह प्रतीत होता है कि पक्षकार या तो इस प्रकरण को चलाना नहीं चाहते हैं या उनके मध्य कोई विवाद नहीं रह गया है परिणामस्वरूप पक्षकारों के मध्य कोई विवाद न होने का नो डिस्प्यूट अवार्ड पारित किया जाना चाहिए तथा नियमानुसार प्रकाशन हेतु भेजा जाना चाहिए।

आदेश

यह अधिनिर्णत किया जाता है कि पक्षकारों के मध्य अब इस संबंध में कोई विवाद नहीं रह गया है। "नो डिस्प्यूट अवार्ड" पारित किया जाता है। खर्चा पक्षकारान अपना-अपना वहन करे।

आदेश न्यायालय में लिखाया जाकर सुनाया गया।

चान्दमल तीनला, श्रम न्यायाधीश

नई दिल्ली, 21 मई, 1998

का०आ० 1225.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पनीयम सीमेंट लि० के प्रबन्धतन्त्र के सम्बन्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-5-98 को प्राप्त हुआ था।

[सं० एल-29012/1/97-आई०आर० (विवाद)]
के० बी० बी० उण्णी, डेस्क अधिकारी

New Delhi, the 21st May, 1998

S.O. 1225.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Panyam Cement Ltd., and their workman, which was received by the Central Government on 21-5-1998.

[No. L-29012/1/97-IR (Misc.)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

PRESENT :

Sri V. V. Raghavan, B.A., LL.B.,
Industrial Tribunal-I.

Dated : 23rd day of March, 1998

Industrial Dispute No. 23 of 1997

BETWEEN

Shri G. A. Gaffoor,
Compounder,
R/o H. No. E-80,
Panyam Cement Ltd.,
Cement Nagar,
P.O. Dist. Kurnool. . . Petitioner

AND

The General Manager (Works),
M/s. Panyam Cements Ltd.,
Cement Nagar,
P.O. Dist. Kurnool. . . Respondent

APPEARANCES :

Sri William Burra Advocate for the Petitioner
M/s. I. L. N. Sastry and I. Sravan Kumar,
Advocates for the Respondent.

AWARD

The Government of India, Ministry of Labour, New Delhi by its Order No. L-29012/1/97-IR (Misc.) dt. 29-5-97 referred the following Industrial Dispute under Section 10(1)(d) and 2A of Industrial Disputes Act, 1947 for adjudication to this Tribunal.

"Whether the action of the Management of M/s. Panyam Cements Limited, Cement Nagar is justified in relieving Sh. G. A. Gaffoor on 30-6-96 at the age of 58 years in violation of Clause 16 of KLS Quarry Mines Certified Standing Orders which says that the retirement age is 60 years? If not to what relief he is entitled?"

Both the parties appeared and filed their pleadings..

2. The workman hereinafter called as 'Petitioner' filed a claim statement contending as follows : The petitioner was appointed as a Compounder in the Respondent Quarry/Mine on 26-9-1961. He was later promoted as Senior Compounder. He has been working in quarry/mine since then without any complaint against him during his 35 years of service. The employees in the quarry/mine should be retired at the age of 60 years. But the petitioner was retired at the age of 58 years on 30-6-96. There was no response for the representations of the petitioner. The petitioner filed a Writ Petition No. 12205 of 1996 before the Hon'ble High Court questioning the retirement but later on the same was withdrawn by him on 6-8-87. He raised this dispute. Hence the respondent may be directed to continue him in service upto the age of 60 years and also pay the back wages.

3. The respondent filed a counter contending as follows : The petitioner filed a writ petition in the

High Court of A.P. and when it was about to be dismissed, he withdrew the same on 6-8-97. The petitioner worked in the factory only but not at quarry. A compounder would go to quarry along-with company doctor on safety celebrations day and it would not vest in him the right to claim service conditions of quarry. An employee in the factory has to retire on attaining the age of 58 years. So the petitioner was retired on 30-6-1996 when he attained the age of 58 years. Hence the petitioner is not entitled to any relief.

4. The points for considerations are :

- (1) Whether the petitioner worked in the quarry as contended by him or in the factory as contended by the respondent ?
- (2) To what relief ?

5. Point 1 :—The petitioner examined himself as WW1 and filed Exs. W1 to W13. The management examined its Senior Manager, HRD and Medical Officer M.W. 1 and M.W. 2 respectively. They filed Exs. M1 to M33.

6. Admittedly the petitioner was appointed by Ex. W2 order dt. 14-9-61. It does not state as to whether he has to work in the dispensary attached to the factory or in the quarry. When the petitioner appeared with Ex. M2 joining report on 26-9-61, some officer made the following endorsement on the same :

“Sir, reported for duty this morning in obedience to our Office Order No. P.G-7068/14-9-61. He is directed to work in the factory dispensary till 30th September, 1961 as he has to pick up work.”

The learned counsel for the petitioner argues that thereafter he was sent to quarry to do the work in the quarry.

7. The petitioner next relied upon Ex. M18 register of employees maintained in Form B under the Factories Act, Ex. W12 metallic token issued to him and Ex. W8 is xerox copy of extract of token. The contention of the petitioner is that as can be seen from the provisions of the Mines Act and the rules made thereunder, a dispensary has to be necessarily maintained at the mine or quarry to give first aid to the employees in the quarry who sustained injuries before they are shifted to any hospital. There was a first aid room maintained in the quarry where he was posted. He was appointed in the first aid room of Kandikayapalli lime mines so that he may give first aid to the workmen who suffered injuries while working in the Mine. He was also kept incharge of the ambulance room. The welfare association gifted the ambulance to the mine for the benefit of the workers so that the injured workers can be taken to the hospital. He relies upon Ex. M18 Form B Register maintained as per the provisions of Mines Act and rules made thereunder. Section 21(3) and (5) of Mines Act

(XXXV of 1952) and Rules 40 to 44 read as follows :

Section 21 of : Medical appliances :
Mines Act

- (3) Every First aid box or cup. board shall be kept in the charge of a responsible person who is trained in such first-aid treatment as may be prescribed and who shall always be readily available during the working hours of the mine.
- (5) In every mine wherein more than one hundred and fifty persons are employed, there shall be provided and maintained a first-aid room of such size with such equipment and in the charge of such medical and nursing staff as may be prescribed.

Rules 40 to 44 of Mines Rules

40. Arrangements for training persons in first-aid etc. :—(1) It shall be the duty of the owner, agent or manager of a mine to see that adequate and suitable arrangements are made for the training of persons in first-aid and the provision of such equipment as is prescribed in these rules.
- (2) (a) It shall be the duty of the owner, agent or manager to see that adequate and suitable arrangements are made for the speedy removal from the mine to a dispensary or hospital, or persons employed in the mine who while on duty suffer from serious bodily injury or illness of a serious nature.
- (b) Unless otherwise approved by an order in writing of the Chief Inspector or an Inspector and subject to such conditions as may be specified therein, the arrangements for the purpose of clause (a) shall be by means of a proper ambulance van, and in case such ambulance van is not readily available in spite of proper and timely requisition, it may be by other suitable motor vehicle which the person can be taken in a supine condition on a stretcher.
41. First Aid qualifications :—No person other than a qualified nurse, dresser, compounder-cum-dresser or medical practitioner shall be appointed to render first-aid [or to be incharge of first-aid station referred to in rule 44 unless he is the holder of a valid first-aid certificate of the standard of St. John's Ambulance Association (India)].

42. First-aid personnel :—(i) The owner, agent, or manager of a mine shall see that every first-aid station provided under rule 44 is placed, during every working shift, in charge of a person holding qualifications specified in rule 41. The person in charge of a first-aid station in any shift should be readily available throughout the shift.
- (2) The name and designation of every person appointed to be in charge of a first-aid station shall be prominently displayed at every first-aid station.
- (3) As up-to-date list of persons appointed to be in charge of first-aid stations in the mine shall be kept in the office of the mine and also displayed prominently at the first-aid room.
43. First-aid rooms :—(1) At every mine employing (more than 150 persons on any one day of the preceding calendar year) there shall be provided and maintained in good order a suitable first-aid room.
- (2) The first-aid room shall be situated at a convenient place on the surface of the mine and shall be used only for first-aid work.
- (3) The (first-aid) room shall have floor space of not less than (10 square metres) shall contain at least the equipment specified in the Second Schedule.
- (4) (a) The first-aid room shall be in charge of a qualified medical practitioner. Where the number of persons ordinarily employed in a mine is more than 1000 such medical practitioners shall be a whole time employee at the mine.
- (b) The medical practitioner referred to in clause (a) shall be assisted by a nurse and a dresser or a compounder and a dresser who are qualified in the allopathic system of medicine. Whenever the Chief Inspector feels it necessary, he may require by an order in writing that such number of additional nurses or compounder or dressers shall be appointed to assist the medical practitioner as may be specified by him.
- (c) The nurse, compounder or dresser referred to in clause (b) shall be whole time employee of the mine and shall be readily available at the first-aid room throughout the period when person work at the mine.
- Provided that where in conformity with any other law in force, or otherwise, an adequately equipped hospital or dispensary belonging to the owner of the mine or to any Mines Welfare Organisation is provided and maintained at or in the immediate vicinity of the mine, the Chief Inspector or an Inspector authorised by him in this behalf may grant exemption from the provision of this sub rule subject to such conditions as he may specify in writing.
- (5) Every person who suffers an injury during the course of work shall report for examination on treatment at the first-aid room, hospital or dispensary as the case may be, before leaving the mine in respect of first-aid having been rendered at or near the place of work.
44. First-aid stations : (1) At every mine there shall be provided and maintained first-aid equipment as prescribed in the Third Schedule at conveniently accessible stations where injured persons may receive first-aid treatment—as follows :
- (a) above ground, one first-aid station—
- (i) at the top at every shaft or incline where men or material are normally wound or hauled;
- (ii) in every workshop ;
- (iii) at every screening plant and loading place; and
- (iv) at every other place where more than 50 persons are employed at any one time.
- (b) in every open cast working one first-aid station for every 50 persons or part thereof employed at any one time; and
- (c) below ground one first-aid station—
- (i) at the bottom of every shaft where men or materials are normally wound and at or near every plant.
- (ii) near the drive and of every haulage.
- (iii) in or at the entrance to every district or section of the mine.
- Provided that nothing in this sub-rule shall be construed to require the provisions of a first-aid station within 300 metres of another first-aid station.
- (2) It shall be the duty of the person appointed to be in charge of a first-aid station under rule 42 to see that the equipment provided at the station is kept in good order and that it is replenished whenever necessary.

- (3) An upto date list of the all first-aid stations provided in the mine shall be kept in the office of the mine and also displayed prominently at the first-aid room.

Section 48 of Mines Act obligates the management to maintain the registers of all persons employed in the mine in respect of each such person, details like the name of the employee with the name of his father or, of her husband as the case may be, and such other particulars as may be necessary for purpose of identification the age and sex of the employee, the nature of employment and the date of commencement thereof, in a prescribed form. The form is prescribed by Rule 77 and it is called form 'B'. A page should be allotted to each employee in the said register. Rule 77-A obligates the management to issue identity tokens bearing number and other particulars by which such person may be identified. The workmen should show the identity card while entering the mine. The respondent maintained Ex. M28 register in the first instance. M.W.2 deposed that the Inspecting Officer suggested that it is not in proper form and so they maintained Ex. M29 and M18 registers. There was some amendment of the rules and the Government of India made it obligatory to affix the photographs also of the employee in the registers. The respondent noted the names of the employees from Sl. Nos. 1 to 100 in Ex. M29 and continued the same in Ex. M18. A photograph of the petitioner is found at Sl. No. 169. He is described as Compounder Ambulance Incharge. He was also given Ex. W12 token bearing No. 169. It was also noted in the register that he was first appointed on 26-9-61 and he was posted in the mine or quarry on 28-1-85. The management relies upon the entry in column No. 10 where the date of termination or leaving the employment has to be noted. It is noted as follows : "28-1-85 though his name is included in Form B Register with effect from 28-1-85, but he is not working at quarry. He has been attending to duties of factory dispensary only" The Senior Manager, HRD deposed as M.W.1 that the Dy. Director of Mines visited the mines in January, 1985 and verified the records. He advised the Management to show one compounder in the Form B Register for one day and on the next day they verified the rules framed under Mines Act and deleted the name of the petitioner from the Form 'B' Register. The Senior Manager (M.W.1) joined the service of the respondent on 1-4-91 as Personnel Manager. He was not in service of the company in 1985. Nobody signed under the above endorsement in column No. 1 referred to above. The person who made the endorsement is not examined. This endorsement could have been made before filing the counter and the register into this Tribunal. This witness admits that there is first aid station in the Mine but says that the officers are

also trained in the first aid and they themselves attended to the first aid work. When the Mines Act and the Rules directed the management to maintain a first aid room when more than 150 persons were employed, the management is bound to maintain the same. To explain this circumstance, M.W.1 deposed that nearly 30 employees are working in each shift in this mine and nearly 90 employees in all work in the mines. He states that he does not know whether the mechanisation took place in 1975 itself and whether 300 persons were employed before 1975 but adds that so many could not have been employed due to the capacity of the plant at that time. By Ex. W13 letter dated 5-1-76 the General Manager informed Dr. D.M. Rangaiah, Srinivasa Clinic and Laboratory, Kurnool that about 250 employees were there for whom blood grouping has to be done and asked the said Doctor to depute his staff on 16-1-1976. So Ex. M18 and Ex. W12 Token No. 169 refer to the petitioner only.

8. The petitioner next relied upon Ex. W9 Certificate issued by the Mines Manager on 20-9-91. He certified therein that the petitioner was as Incharge of Ambulance/First-Aid Station at Kandikayapalli Limestone Quarry since 1961. The contention of the respondent is two folds: Firstly the Mines Manager gave certificate after submitting his resignation letter Ex. M21 dated 12-8-91 and before he was relieved that secondly it is Personnel Officer who is competent to issue the service Certificate. Under Section 17 of Mines Act every mine shall be under a Manager who shall have the prescribed qualifications and shall be responsible for the control, management, supervision and direction of the Mine and the owner or agent or every mine shall appoint himself or some other person, having such qualification to be such manager. The manager, agent and owner shall be responsible that all operations carried on in connection therewith are conducted in accordance with the provisions of this Act and of the regulations, rules and bye-laws and of any orders made thereunder as stated in Section 18 of Mines Act. It cannot be said that as long back as in 1991, the petitioner and the Mines Manager colluded together to create a document in favour of the petitioner.

9. The next circumstance relied upon by the petitioner is the Photographs Exs. W11 and Ex. M30 to M33 taken at the time of Mines safety week celebrations showing all the employees including the petitioner. The Officers and the workers are present in the same. At that time these photos were taken from different angles. We find the photo of the petitioner also alongwith other mine workers and the officers in these photos. The respondent itself admitted in para 4 of the counter as follows: "Once in a year Compounder would go to quarry alongwith Company doctor on safety celebrations day. Attending to this type of function at Quarry would not vest in him the right to claim service conditions of quarry. It may also be mentioned that no compounders were working at quarry, nor any compounder was appointed at quarry". M.W. 1 also admitted that the petitioner has been attending the safety week celebrations in his individual capacity. In the face of the above admissions, the Chief Medical Officer as M.W. 2 deposed that the petitioner might have attended the mine as a guest alongwith other officers and employees. He is speaking falsehood with due respect to his age and occupation.

10. As against the above circumstances in favour of the petitioner-workman, the respondent also relied upon some circumstances. It is true that as found in Exs. M3 and M12 to M15 Attendance Registers, the petitioner's name is shown in the dispensary near the factory and not shown in Exs. M16 and M17 attendance registers of the employees in the mine. The explanation of the petitioner is that except himself, all other Medical Officers and staff are working in the dispensary near the factories and so his name is also shown

n the attendance registers and wages registers of the dispensary so that the Chief Medical Officer may have effective control over him. The explanation is probable and not false. Similarly the respondent relied upon Ex. M4 application given by the petitioner and other dispensary employees for payment of double the emoluments for performing overtime duty during night time and also at the time of emergency work. The petitioner states that now and then, he is made to work in the dispensary also. It is quite common when the other two compounders go on leave, the petitioner is made to work in the dispensary. The petitioner described himself as compounder in the dispensary in his application dated 25-12-82 requesting for granting suitable grade. Ex. M18 Form B Register shows that the petitioner was in dispensary till 1985 and he was shifted to the mine or quarry on 28-1-1985. So this document does not support the case of the respondent. The petitioner mentioned in Ex. M6 representation dated 7-6-96 to the Assistant Labour Commissioner (Central) that he has been working in the dispensary as well as in the mine. The payment of the bonus alongwith other workers in the dispensary also does not support the case of the respondent as he is treated as a worker alongwith all other staff in the dispensary. All the documents filed by the respondent relate to period earlier 1985 and they are not relevant.

11. The learned Advocate for the petitioner relied upon the decision in the case of S. P. Dubey vs. M. P. State Road Transport Corporation and another (2 SCLJ 1984—1993 pages 34 to 37) wherein the Supreme Court held that the employee of a company which was taken over by the Government, is entitled to retire at the age of 60 years on par with the service conditions of the company and not 58 years of age which is the retirement age of State Government employees. He next relied upon the decision in the case of M. G. Pandke and others vs. Municipal Council, Hinganeha, District Wardha and others (3 SCLJ 1984—1993 pages 328 to 332) in which also the Supreme Court held that the Municipal Council cannot reduce the age of retirement of teachers from 60 to 58 years by a resolution. The two decisions do not have much bearing upon the facts of the case. I hold that the petitioner was the employee in the Mine and not in the factory dispensary from 1985.

12. Point No. 2: The petitioner is entitled to continue in service till he attains the age of 60 years as per Ex. W-1 Standing Orders of the quarry. So he is entitled to retire on 30-6-1998 and not on 30-6-1996. Hence an Award is passed directing the respondent to reinstate the petitioner with full back wages and attendant benefits.

Dictated to the Sr. Stenographer, transcribed by her, corrected by me and given under my hand and the seal of this Tribunal, this the 23rd day of March, 1998.

V. V. RAGHAVAN, Industrial Tribunal-I
Appendix of Evidence

V. V. RAGHAVAN, Presiding Officer

Petitioner

Respondent

WW1: G. A. Gafoor

MW1: O. Sudhakar Reddy

MW2: Dr. K. Satyanarayana Rao

Documents marked for the Petitioner

- Ex. W1: Xerox copy of booklet of standing orders of the quarry.
- Ex. W2: Xerox copy of order of appointment order issued to WW-1.
- Ex. W3: Xerox copy of retirement order.
- Ex. W4: Xerox copy of representation dt. 12-6-96.
- Ex. W5: Xerox copy of representation dt. 19-6-96.
- Ex. W6: Order copy of High Court in WP No. 12205/96 dt. 6-8-97.
- Ex. W7: Xerox copy of Form-B Register.
- Ex. W8: Xerox copy of extract of token.
- Ex. W9: Xerox copy of certificate dt. 20-9-97 issued by the Mines Manager (Service certificate).

- Ex. W10: Notice dated 3-8-95 issued to WW-1 regarding the superannuation.
- Ex. W11: Photograph showing WW1.
- Ex. W12: Token issued to WW1.
- Ex. W13: Letter dated 5-1-76 written by the Management to Dr. D. M. Rangaiah.

Documents marked for the Respondent

- Ex. M1: Copy of the memorandum of WP filed in WP No. 12205/96.
- Ex. M2: Joint report submitted by WW1.
- Ex. M3: Bunch of attendance registers (xerox copies).
- Ex. M4: Common representation by the worker for special allowance dt. 19-9-78.
- Ex. M5: Application dt. 26-12-82 given by WW1 for payment of extra grade allowance and suitable quarter.
- Ex. M6: Representation dt. 7-6-96 given to ACL, Hyd. by WW1.
- Ex. M7: Enclosure to Ex. M6.
- Ex. M8: Enclosure to Ex. M6.
- Ex. M9: Enclosure to Ex. M6.
- Ex. M10: Notice given by the ALC for conciliation meeting.
- Ex. M11: Standing Orders for the workers of the cement factory.
- Ex. M12 to M15: Attendance Registers for the factory.
- Ex. M16 and M17: Kandikayapalli-Lime Stone quarry attendance register for the mines.
- Ex. M18: Register of employees maintained in Form B Register.
- Ex. M19: Register maintained from 1982 to 1987 for the Bonus paid to the workers in the factory.
- Ex. M20: Bunch of papers and the pay rolls for the employees in the dispensary.
- Ex. M21: Resignation letter of Sri M. B. Shankar Reddy.
- Ex. M22: Office order dt. 28-6-93 issued to the petitioner and others enhancing extra duty allowance from 75 to 125.
- Ex. M23: Office order dt. 13-7-79 revising the pay scale of WW1.
- Ex. M24: Office order revising the pay scale of WW1.
- Ex. M25: Nomination form submitted by WW1 for payment of gratuity (Central) Rules, 1972 (Form F).
- Ex. M26: Office order dt. 19-2-85 allotting quarter to WW1.
- Ex. M27: Service certificate dt. 20-4-82 issued to the petitioner.
- Ex. M28: Form B Register.
- Ex. M29: New Form B Register (Revised format).
- Ex. M30: Photo.
- Ex. M31: Photo taken on safety week celebrations.
- Ex. M32: Photo taken on covering some more employees.
- Ex. M33: Photograph.

नई दिल्ली, 21 मई, 1998

कां० 1226.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सीसा गोआ लि० के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक

विवाद में औद्योगिक अधिकरण, पणजी, गोआ के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-5-98 को प्राप्त हुआ था।

[सं० एल-29012/28/91-आई०आर० (विविध)]

के० वी० बी० उण्णी डेस्क अधिकारी

New Delhi, the 21st May, 1998

S.O. 1226.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Panaji Goa as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Sesa Goa Ltd., and their workman, which was received by the Central Government on 21-5-98.

[No. L-29012/28/91-IR (Misc.)]

K. V. B. UNNY, Desk Officer

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)
Ref. No. IT/64/92

Shri Marcelino Rebello,
Janata Housing Coop. Society Ltd.,
Margao Goa. ... Workman|Party I

Vs.

M/s. Sesa Goa Limited,
Altinho, Panaji Goa Employer|Party II Workman|
Party I represented by Shri Subhash Naik.
Employer|Party II represented by Shri A. V.
Salgaonkar.

Dated : 4-5-98

AWARD

By order dated 21-6-91 bearing No. L-29012/28/91-IR (Misc.) the Central Government referred the following issue to the General Industrial Tribunal, Bombay, for adjudication :

"Whether Shri Marcelino Rebello, Sr. Chemist in laboratory of M/s. Sesa Goa Ltd., Panaji is a workman under Industrial Disputes Act, 1947 ? If he is a workman, whether the action of the management of M/s. Sesa Goa Ltd., in accepting resignation of Mr. Marcelino Rebello w.e.f. 16-12-87 is justified ? If not, to what relief the workman is entitled ?"

2. The above said reference was registered under No. CGIT/53/91 and subsequently it was transferred to this Tribunal by the Central Government by order dated 24-9-93. On receipt of the said reference, it was registered under No. IT/64/92. When the dispute was transferred to this Tribunal, the parties had already filed the statement of claim, the written statement, Rejoinder respectively. The facts of the case in brief as pleaded by the workman|Party I (For

short "workman") in his statement of claim are that, he was appointed as a Chemist in the organisation of the Employer|Party II (For short "Employer") by letter dated 30th July, 1976. That, as per the terms of the said appointment letter, the workman had to abide by the standing orders and/or rules and regulations of the employer and one month's notice in advance was required to be given by either party in case of termination of service after confirmation or in lieu of such notice one month's salary had to be paid to either party as the case may be. That he discharged his duties diligently and faithfully and had meritorious service records with the employer for eleven years and further his performance for the year 1986 was adjudged as "Very good at Analytical work". That in appreciation of his services, he was confirmed in service by letter dated 22-11-76 and he was given regular increments from time to time. That as a Sr. Chemist, he was performing duties of Technical nature and he was required to analyse 3 samples for detail elements per shift, which were mainly Iron Ore samples. That the employer also made efforts to change the procedure for the alumina from Thiosulphate-Phosphate Method to E.D.T.A. methods in Iron Ore samples whereby the number of samples that could be analysed was four. That, somewhere in the year 1987, the General Manager of the Employer stated a false propaganda that the workman was instigating other chemists not to analyse more than four samples and that this false propaganda caused distress and mental agony to him. That thereafter, the employer started forcing him to tender his resignation and he was further coerced into believing that if he did not do so, his services would be forcefully terminated and in that event, his prospects of getting another job would be dim. That the systematic campaign of false propaganda against him helped to demolish his spirit and stamina to continue in his job as he was a very sensitive person by nature. That unable to face the false allegation, he wrote a letter dated 15-12-87 to the employer stating "As you express your lack of confidence in me I am constrained to tender my resignation". That however, he was persuaded by the Assistant Manager (Pers & Admn) to re-write his resignation letter stating that it would injure and jeopardise his prospects and he was asked to re-write the resignation letter stating that he was resigning for domestic reasons. That his resignation letter was obtained by force and coercion and he was relieved from employment w.e.f. 16-12-87 by letter dated 17-12-87 and further he was directed to call at the employer's office at Sanquelim on 21-12-87 or any other working day thereafter to collect his dues in full and final settlement. That alongwith the said letter of acceptance of resignation, no salary was paid to him which was in breach of clause 18 of the appointment letter dated 30-7-76. That he visited the Sanquelim office of the Employer regularly after 21-12-87 to collect his dues and he received the Statutory computation of Gratuity dues in full and final settlement. That thereafter, the statement giving detailed account together with the cheque dated 7-1-88 drawn on Canara Bank dated 7-1-88 was given to him on 4-3-88 which cheque was deposited by him only on 29-6-88 as he did not have any other source of livelihood. That realising that he was forced and coerced into submitting his resignation letter, he wrote a letter dated 30-1-88 to the Managing Director

giving the background and the sequence which led him to submit his resignation letter and pointed out to the Managing Director that his resignation was not a voluntary act and it was obtained under coercion and duress. That the employer realised of their fault and the shabby treatment meted out to him and thereafter started giving verbal assurances that he would be reinstated and subsequently issued a temporary reinstatement letter dated 26-2-88 reinstating him for a period of three months with an assurance that his services would be regularised and confirmed. That since his temporary appointment was to end on 31-5-88, he wrote a letter dated 12-5-88 to the employer and his wife also wrote a letter dated 9-5-88 to the Technical Director of the employer requesting for his reinstatement. That by letter dated 16-5-88, the Technical Director informed his wife that the employer had stopped mining operations due to monsoons and therefore, it was not possible to reinstate him at that stage and his case would be considered favourably at a later date. That thereafter, the employer issues another temporary reinstatement letter dated 25-10-88 and thereafter, his services were once again terminated. That, though the Technical Director of the Employer stated that the mining operation had been stopped due to monsoon and as such he could not be reinstated, 2 Chemist, namely Shri Santosh Bhaat and Shri Mahendra Lamanday were appointed in October/88 which establishes the discrimination and hostility towards him. That he was left with no alternative but to file an application before the Assistant Labour Commissioner (Central), Vasco de Gama dated 26-12-89 raising an Industrial Dispute and the Conciliation proceedings held by the Asstt. Labour Commissioner resulted in a failure and a failure report was submitted to Government of India, Ministry of Labour. The workman challenged his resignation letter and the acceptance of the same by the employer on various grounds stated out in the Statement of Claim. The workman contended that his resignation letter dated 15-12-87 was obtained fraudently and the same was converted into termination letter dated 17-12-87. The workman claimed that he is entitled to reinstatement in services with full back wages from the date of his resignation letter dated 15-12-87 and other consequential benefits.

3. The employer filed written statement disputing the claim of the workman. The employer stated that as a part of their mining activity, they have established their own analytical laboratories for carrying out analysis of Iron ore extracted from the mines and such laboratories are situated at Sanquelim and Codli Iron Ore Mines and they are placed under the control and direction of a senior supervisory category employee designated as Sr. Chemist and he reports directly to the Manager-Technical Services. The employer stated that the workman was initially employed in the year 1976 as Chemist and thereafter was promoted to the category of Sr. Chemist in the year 1981 w.e.f. 1-1-1981 and was placed as Incharge of Analytical Laboratories at Codli and Sanquelim Iron Ore Mines with headquarters at Sanquelim. The employer stated that being a Senior Chemist, the workman was responsible for efficient running of the laboratories and for carrying out the activities at the said labo-

ratories. He was provided with the assistance of 4 Chemist belonging to Jr. Supervisory category of employees, 5 Jr. Chemist, 4 laboratory attendants and 5 labourers and that he used to allocate work to his sub-ordinates, supervise their work and conduct interviews test for selection of candidates, recommend their leave and reprimands them as and when required. The employer stated that the requirements of the said laboratories either in the form of man or materials were sanctioned on recommendations of the workman and this position continued till the workman submitted his resignation on 15-12-87. The employer stated that the workman was carrying out functions which were mainly of supervisory in nature and which were inherent to the designation of Senior Chemist and since he was drawing more than Rs. 2,000/- as monthly wage, he was not a workman within the meaning of Sec-2(S) of the Industrial Disputes Act, 1947. The employer stated that on 15-12-87, the workman voluntarily and of his own will submitted his resignation on the ground that due to certain domestic reasons he was not able to stay at Sanquelim which resignation letter was accepted by the employer vide letter dated 17-12-87 and he was relieved of the services on while accepting the resignation, the workman was offered exgratia payment of 3 months wages at his request as a special case on account of his son's serious illness. The employer stated that the workman received Rs. 27,018.35 in full and final payment of his dues as a result of resignation. The employer stated that the workman was provided employment twice, purely on temporary basis at his personal request and on the ground, the first being from 1-3-88 to 31-5-88 and the second being from 1-11-88 to 30-4-89 and he was issued letters to that effect which were accepted by him. The employer stated that since the workman resigned voluntarily, the employer was fully justified in accepting the resignation and relieving him of the services w.e.f. 16-12-87. The employer denied that the workman was harassed by the General Manager or any official of the employer or that the workman was forced or coerced to submit his resignation. The employer stated that the allegation made by the workman are with ulterior motive and prejudicing the mind of the Tribunal and as a matter of afterthought as the officials of the employer had no reasons of whatsoever to harass the workman as alleged. The employer denied that the workman was forced to change the language of the resignation letter. The employer denied that any assurance was given to the workman that his services would be regularised or that he was reinstated by virtue of the temporary appointment letter dated 25-10-88. The employer stated that once having resigned from the services, the workman had no lien on employment and therefore, the action of the employer in employing two chemist cannot be termed as vindictive. The employer stated that the grounds challenging the resignation letter and the acceptance of the same by the employer, set up by the workman in the statement of claim are based on wrong, false and mischievous presumptions that the services of the workman were terminated by the employer. The employer stated that reference itself shows that the case is that of accepting the resignation submitted by the workman and not the

termination of services by the employer. The employer therefore contended that the workman is not entitled to any relief as claimed by him. The workman thereafter filed Rejoinder controverting the pleadings made by the employer in the written statement.

4. On the pleadings of the parties, following preliminary issues were framed on 21-12-92 at Exb. 5.

1. Does Party I — Marcelino Rebello prove that he is a working as defined in Section 2(S) of the Industrial Disputes Act, 1947?
2. If not, whether this reference is maintainable in law?
3. If not, what order?

On the said preliminary issues, the parties led evidence. However, before the arguments were heard, the workman filed an application dated 20-10-94 at Exb. 28 stating that no issues were framed on the rival contention of the parties with regard to the schedule of the reference and that erroneously, only the preliminary issues were framed. The workman therefore prayed with this Tribunal to frame other issues in regard to the schedule of reference and the pleadings made by the parties. After hearing the parties on the said application, this Tribunal passed an order dated 10-1-95 holding that further issues shall be framed on the pleadings of the parties and in regard to the schedule of the reference and the parties shall lead evidence on the said issues. It was also held that the preliminary issues shall be decided alongwith the other issues to be framed. Accordingly, additional issues were framed and the issues were renumbered. The issues framed and renumbered are as follows :—

1. Does Party I—Marcelino Rebello prove that he is a workman as defined in section 2(S) of the Industrial Disputes Act, 1947?
2. If not, whether the reference is maintainable in law?
3. Whether the Party I proves that his resignation letter was obtained by the Party II by force, coercion and under duress?
4. Whether the Party I proves that the provisions of clause 13 of the appointment letter are breached and hence the resignation letter cannot be given effect to?
5. Whether the Party I proves that the action of the Party II in accepting his resignation w.e.f. 16-12-87 is not justified?
6. Whether the Party I is entitled to any relief?
7. What Award?

5. My findings on the issues are as follows :

Issue No. 1 : In the negative

Issue No. 2 : Reference is not maintainable

Issue No. 3 : Does not arise

Issue No. 4 : Does not arise

Issue No. 5 : Does not arise

Issue No. 6 : In the negative

Issue No. 7 : As per order below

REASONS

6. Issue No. 1 :—Shri Subhash Naik, representing the workman submitted that the standing orders of the employer which are produced at Exb. W-21 are applicable only to the workman and the letter of appointment issued to the workman states that he will be governed by the standing orders of the employer or any other rules and regulations of the employer as may be in force for the time being. He submitted that this itself shows that the workman is a "workman" within the meaning of the Act. In support of his this contention, he relied upon the decision of the Bombay High Court in the case of S. A. Sarang V/s. W. G. Forge & Allied Industries Ltd., & Others reported in 1995 1 CLR 837. He submitted that even otherwise, the workman was working with the employer as a Chemist and he has stated in his deposition about the duties performed by him as a Chemist, which duties are of Technical in nature and hence he is a workman within the meaning of the Act. In support of his this contention, he relied upon the decision of the Supreme Court in the case of Burmah Shell Oil Storage & Distribution Co. V/s Burmah Shell Management Staff Association reported in 1950-83 SCLJ Vol. 6 at page 545. Shri Subhash Naik also relied upon the decision of the Supreme Court in the case of Anand Bazar Patrika (F) Ltd. V/s Workman reported in 1950-83 SCLJ Vol. 6 at page 607 and in the case of S. K. Verma V/s Mahesh Chandra & Another reported in 1950-83 SCLJ Vol. 6 at page 10, in support of his contention that as per the duties performed by the workman, he is a "workman" within the meaning of Sec. 2(S) of the Act.

Shri A. V. Salgaonkar, representing the employer on the other hand submitted that the workman has admitted in his deposition that his salary was more than Rs. 1600/- per month; that he was promoted as a Senior Chemist in the year 1981 when there was no chemist in charge; That he was in charge of one of the laboratories : That he was recommending leave; That he was supervising over the work of the Jr. Chemists during training; That he was recommending transfers and was on interview panel; That he was not working in shifts; That he was signing joining reports; That he used to forward clearance certificate, LTC application, arrange programme of shifts; That he used to supply materials for laboratory etc. He submitted that the above evidence shows that the workman was performing the duties of a supervisory nature. He referred to the evidence of Mr. Maske, the witness examined by the workman and submitted that this witness worked with the employer for a very short period. He submitted that in his cross-examination, he has admitted that he used to sent his leave application through the workman and also he had requested him for his transfer and that in case of difficulty, he used to consult the workman. He then referred to the

evidence of Mr. Natesan, the witness examined by the employer and submitted that the said witness has stated that the workman used to supervise over the work of chemists and that he was directly supervising the work of the laboratories and send relievers for Chemists. Shri Saigaonkar submitted that from the oral evidence as well as from the documentary evidence on record, it is established that the workman was doing the duties mainly of a supervisory nature and since he was drawing salary of more than Rs. 1600/- per month, he is not a "workman" within the meaning of sec. 2(S) of the I.D. Act, 1947. In support of his contention that the workman Mr. Rebello is not a "workman" as defined under the Act, he relied upon the decision of the Madras High Court in the case of Ivor Fernandes V/s Stanes Motors reported in 1982 11 LLJ 155; the decision of the Kerala High Court in the case of Kerala State Electricity Workers Federation V/s Kerala State Electricity Board reported in 1983 11 LLJ 30; the decision of the Supreme Court in the case of Burmah Shell Company V/s Burmah Shell Management Staff Association, reported in 1970. 11 LLJ 590; the decision of the Hyderabad High Court in the case of J. Phillips V/s. Labour Court, reported in 1993 11 CLR 815; and the decision of the Bombay High Court in the case of Apparao Basavannappa Manore V/s. Wandieside National Conductors Ltd., reported in 1994 11 CLR 793.

7. In the present case, the workman as well as the employer have led evidence on the issue No. 1. The workman has examined himself and one witness Shri Maske, whereas, the employer has examined Shri Natesan, the General Manager of the mining operation of the employer. Sec. 2(S) of the Industrial Disputes Act, 1947 defines "workman". As per Sec. 2(S)(iv) of the definition, a person who is employed in a supervisory capacity and who draws wages exceeding one thousand six hundred rupees per month is not a workman as he falls in one of the exceptions laid down under the said section. It is the case of the workman that his duties were that of technical in nature and therefore, he falls within the definition of "workman" whereas it is the case of the employer that the workman was performing duties mainly of a supervisory nature and was drawing wages of more than Rs. 1600 p.m. and therefore, he falls within the exception of the definition of "workman". The Supreme Court in the case of Ananda Bazar Patrika (Supra) and Burmah Shell Oil (Supra) was held that to decide whether a person is a workman or not, what is required to be seen is the main work carried out by that person and not the incidental work done by him. The Bombay High Court in the case of S. A. Sarang V/s. S.W.G. Forge & Allied Industries Ltd; (Supra) has held that it is a settled law that it is the actual work done by the employee which is determinative of whether he falls within the scope of the definition of "workman" under Sec. 2(S) of the Act and not his designation. Therefore, to find out whether the workman Shri Rebello is a "workman" within the meaning of the definition or not, what is required to be considered is the principal or main duties performed by him, and not the incidental work done by him.

8. In the present case, since the reference itself stated whether the workman Mr. Marcelino Rebello is a workman under the Industrial Disputes Act, 1947, the burden was on the workman to prove that he is a "workman" within the meaning of Sec. 2(S) of the Industrial Disputes Act, 1947, as there is no presumption in such a case that he is a "workman". Therefore, issue No. 1 was rightly framed, casting the burden on the workman to prove that he is a "workman" as defined under Sec. 2(S) of the I.D. Act, 1947. It is not in dispute that initially the workman was appointed as a Chemist vide letter of appointment dated 30-7-76 which is produced at Exb. W-1, and that subsequently, he was promoted to the post of Senior Chemist w.e.f. 1-1-1981 vide letter dated 29-1-1981 Exb. 25. As on the date when the resignation of the workman was accepted by the employer w.e.f. 16-12-87, the workman was working as a Senior Chemist. Therefore, it is necessary to find out what were the main duties that were being carried out by the workman as a senior chemist. Shri Subhash Naik, representing the workman has relied upon the decision of the Supreme Court in the case of Burmah Shell Oil (Supra) in support of his contention that as a chemist, the workman was doing technical work and therefore, he is a "workman". I have gone through the said decision of the Supreme Court. In the said case, the Supreme Court did hold that the chemist who were working with the Burmah Shell Oil storage and Distribution Company were doing the work of technical nature and they were personally doing the work of testing the products received, test the products as they are altered in the installation at various stages. The findings of the Supreme Court that the said chemists were "workman" was based on the evidence on record as regards the nature of work done by them. Therefore, in the present case also it will have to be found out what were the main works that were being carried out by the workman as a senior chemist and if the said works were of technical nature, he would be covered by the decision of the Supreme Court and would be a "workman" within the meaning of the Act.

9. The workman has examined himself and one witness Shri Fradeep Maske in support of his case on this issue No. 1 which was treated as preliminary issue and the employer has examined the General Manager of the mining operation. The workman in his deposition stated that he joined the services of the employer as a chemist in the year 1976 and he was doing the work of analysing the samples of iron ore and that work was being assigned to him by the chemist in charge. He further stated that though he was promoted as a Senior Chemist, there were no change in his duties but he had a monetary benefit and he was given additional work. He stated that he was not responsible for the work carried out by the Jr. Chemist and also was not supposed to re-check the samples checked by the subordinates. He admitted that he used to supervise over the work of the junior chemists during their training period and that he was in charge of one of the laboratories. He stated that he was not the sanctioning authority but he recommended leave for Junior Chemist. He denied that he was on the panel for interview of Jr Chemist. In his cross-

examination, he however admitted that he was called in the interview panel as a Sr. Chemist and he admitted the employee interview forms Exb. 7 colly. He also admitted his signature on the joining reports of the Chemists produced at Exb. 8. He admitted that he used to recommend for confirmation of the Jr. Chemists and he admitted his signature on the recommendation letter Exb. 9. He admitted that he used to recommend leave to chemist and Jr. Chemist and admitted his signature on the leave applications Exb. 10 and 11. He also admitted his signature on the staff clearance slip Exb. 14 and medical attendance cards Exb. 15. He stated that this card was maintained whenever any person was sent for medical check-up. He admitted that he used to forward and recommend about LTC applications, supply, materials from the laboratory, arrange the programme of the shifts regarding chemists and Jr. Chemists of Sanquelin lab and admitted his signature on the shift programme Exb. 16 and also admitted that he used to give reports about Sunday working of the chemist. He admitted that he had recommended transfer of Shirodkar at Codli Mines by letter dated 1-4-1986 Exb. 18. He admitted that reports produced at Exb. 19 colly, some of which carried his signature and some were addressed to him. He admitted that he had recommended Shri Tendulkar, Jr. Chemist, situated for training. He admitted that he was not the member of the union and that he belonged to officer category of the Company. Shri Maske, the witness for the workman stated in his deposition that he was working as the Jr. Chemist in the Lab at Sanquelim and that there was no difference in work carried out by the Jr. Chemist and the Sr. Chemist. He stated that all of them were independent in their work and there was no supervisor. He stated that there was a general register for Jr. Chemist and a separate register for Sr. Chemist. He stated that he was not reporting to the workman Mr. Rebello but he used to send his leave application through him. In his cross-examination however, he admitted that after he joined, he reported to the workman. He denied that he was working under the workman but admitted the contents of his resignation letter Exb. 13. In the said letter, the witness has stated that the staff members under senior chemist Mr. Rebello were co-operative and work oriented. The employer has examined Shri Nateshan, the General Manager of mining operation. He stated that the employer has 2 laboratories, one at Sanquelim and the other at Codli and that the said labs were under his supervision when he was the Manager (Technical Services). He stated that the workman Mr. Rebello was directly supervising the work of the labs as a Sr. Chemist, and was also supervising the work of the chemists who were working under him. He stated that the workman was recommended to maintain any record in respect of the analysis. In his deposition, he admitted that in the letter of promotion Exb. 25, no duties of the Sr. Chemist were mentioned nor there was any order mentioning the duties of a senior chemist. He stated that there were two shifts and the workman was working in the general

shift. He admitted that the workman Shri Rebello was the recommending authority and not the sanctioning authority.

10. The gist of the decisions relied upon by the workman as well as by the employer is that what is important is the main work carried out by a person. If the main work carried out is of supervisory nature and the person draws wages of more than Rs. 1600 p.m., he will not fall within the definition of "workman" though he may be doing some technical, clerical or manual work which is incidental. From the evidence that has been led by the parties and which has been discussed by me above, it is established that, (1) the workman became the incharge of both the laboratories on being promoted as Sr. Chemist. Though the workman in his deposition stated that he was in charge of only one laboratory, he was confronted in his cross with the statement Exb. 17 given by him in the enquiry of Lab. Asst. Shri Shirodkar. In the said statement, the workman has stated that he was incharge of the laboratories i.e. the laboratory at Sanquelim and at Codli. His explanation in cross that he made the above statement in the enquiry by mistake cannot be accepted. In his statement recorded in the enquiry, he has categorically stated that he was incharge of all the laboratories and he has clarified his statement further by stating the places where the laboratories are situated. Therefore, his explanation that he made the statement by mistake cannot be accepted. (2) The newly recruited staff in the laboratories were reporting to him, and he was reporting the matter as regards joining of the duties by the staff to the personal section. This is evident from the letters Exb. 8 written by the workman to the Personal Section and these letters are admitted by the workman in his cross examination. (3) The workman was instructing the chemists about their duties and allocate duties to them in shifts. In his cross examination, he has admitted that he used to arrange the programme of shifts as regards chemists and Jr. Chemists. This is evident from the documents produced by the employer. In the letter dated 20-9-85, Exb. 8, the workman has informed the personal section that the Jr. Chemist Mr. Maske has been instructed about his duties. The shift programme Exb. 16 which is admitted by the workman shows that the workman was allocating the duties to the chemists and Jr. Chemists for shifts. The letters produced at Exb. 19 colly show that the staff at the laboratories including chemists and Jr. Chemists were working under the workman and he used to give them instructions as regards working overtime, attending seminar on quality control, materials to be used and the manner in which the tests are to be carried out, which samples are to be given priority for analysis, re-arranging their duties in shifts, asking them to send daily reports of the analysis of samples made, the manner which the reports are to be sent including the report about the attendance of the chemists, asking them to seek advice from him in case they faced any difficulty, asking them to send to him the inventory of the office furniture and equipments at the laboratory etc. The letter Exb. 19 colly show that the staff at the laboratories were sending reports to the workman as regards the number of samples received for analysis, the number of samples

analysed. These reports were being sent as per the instructions from the workman. The letters Exb. 19 colly show that the workman was sending the required materials to the laboratories. (4) The workman was taking practical tests of the candidates for the post of Jr. Chemist, supervise over his work and recommend the suitable candidate to be taken for training in analytical work. This is evident from the letter dated 9-9-1986 Exb. 20 written by the workman to the General Manager of the mining operation. (5) The workman used to control the attendance of the staff in the laboratories and recommend their leave. This is evident from the letter dated 11-10-1986 Exb. 12, the letter dated 12-9-1986 Exb. 11 and the application for leave Exb. 10. Besides, the workman has admitted in his evidence that he used to recommend the leave to chemist and Jr. Chemists. (6) The workman was reporting indiscipline behaviour of the staff member to his superior and was recommending suitable action against him. This is evident from the letter dated 1-4-1986 Exb. 18 written by the workman to the Sr. Manager, Mining Operation. In the said letter, the workman has reported to the senior Manager about the indiscipline behaviour of the Lab. Attendant Shri D. Shirodkar and has recommended that he should be transferred to Codli laboratory and the Lab Attendant Shri Anand Kalapurkar be transferred from Codli Lab to Sanquelim. (7) The workman used to assess the work and conduct of the Jr. Chemists during the probation period, submit his report to the Personal section and recommend whether he should be confirmed or not. This is evident from the remarks put by the workman on the confidential letter dated 16-3-1986 Exb. 9. In this letter the Personnel section had sought remarks from the workman in respect of the Jr. Chemist Shri Raikar, who was due for confirmation. The workman put his remarks stating that the analytical work and conduct of Shri Raikar was found to be satisfactory and he was suitable for enrolment as a permanent employee. (8) The workman used to sign the medical attendance card of the staff member whenever he was to be sent for medical check-up as can be seen from medical attendance card, and also used to sign the staff clearance slip whenever any staff member was to leave the services. (9) The workman used to be in the interview panel whenever Jr. Chemists were to be recruited. The workman has admitted this fact in his evidence. Besides, the employer has also produced the employee interview forms Exb. 7 colly which show that the workman was one of the interviewers of the candidates for the post of Jr. Chemists. This means that the workman was associated with the job of selecting the candidates for the post of Jr. Chemist. (10) The workman was also recommending whether the resignation of the staff member at the Lab should be accepted or not and whether substitute should be provided or not. This is evident from the letter dated 12-3-1986 Exb. 13. This is a resignation letter given by the Jr. Chemist Shri Maske, which is admitted by the workman. In this letter, the workman has recommended acceptance of the said resignation letter and has also recommended providing of a substitute at the earliest. All the above evidence clearly shows that the above duties conformed by the workman were his main duties. These duties cannot be termed as clerical or Technical duties. These duties are definitely nothing but of a supervisory nature. The staff members including the

Jr. Chemists and the chemists were working under the supervision and Control of the workman as can be seen from the evidence discussed above. The workman has tried to set up a case that even after he was promoted as the Sr. Chemist, he continued to do the work of analysing the samples. However, the workman has failed to lead any evidence in support of his this contention. The workman in his cross-examination stated that a register was maintained as regards the analysing of samples and the person doing the analysis used to put his initials. He stated that he used to maintain a separate register which he used to sign. Now, if the workman was doing the work of analysis and was maintaining a separate register in that respect, he ought to have produced the said register. He could have directed the employer to produce the said register. However, the workman neither relied upon the said register nor called upon the employer to produce the said register. Therefore, there is no evidence that the workman continued to do the work of analysing samples though he was promoted as the Sr. Chemist. The employer has however produced three registers for employer has however produced three registers for Exb. 21 colly pertaining to Sanquelim Lab. The workman admitted that his initials appear on the said registers only on 4 occasions. This disproves the contention of the workman that he was maintaining a separate register as regard the analysis work done by him. Besides, as per the admission on the part of the workman himself, the said registers show that for the entire period of more than three years, that is from September 1984 to December 1987, he has done analysis of the samples only on 4 occasions, whereas, the registers Exb. 21 colly show that a number of sample analysis were done by other chemists every month. This itself shows that doing the analysis of samples was not the main work that was being done by the workman but it was incidental to his main supervisory duties. It is possible that the workman did the analysis of samples on 4 occasions due to urgency of work or for any other reason. Another factor which is also relevant is that the workman has admitted in his cross-examination that he was not the member of the Union and that he belonged to the officer's category. I, therefore, hold that the workman was performing the duties mainly of supervisory nature and not Technical as contended by him.

11. Section 2(S) of the Industrial Disputes Act, 1947 defines "workman". As per Sec. 2(S)(iv) a person who is employed in a supervisory capacity and who draws wages exceeding one thousand six hundred Rupees per month is not a "workman". He is an exception and does not fall within the meaning of "workman" as defined under Sec. 2(S) of the Act. In the present case, I have held that the workman Shri Rebello was performing the duties mainly of supervisory nature. In his cross-examination, he has admitted that he was drawing wages of more than Rs. 1600 p.m. Therefore, since the workman Shri Rebello was performing the duties mainly of supervisory nature and was drawing wages of more than Rs. 1600 p.m., he falls within the exceptions to the definition of "workman" as defined under Sec. 2(S) of the I.D. Act, 1947 and he is not a "workman". I therefore, held that the workman Shri Marcelino Rebello has failed to prove that he is a "workman"

as defined in Sec. 2(S) of the I.D. Act, 1947 and hence I answer the issue No. 1 in the negative.

12. Issue No. 2.—The appropriate Government can make reference of only an industrial dispute for adjudication by the Industrial Tribunal and not any other dispute. Sec. 2(K) of the I.D. Act, 1947 defines industrial dispute. As per the definition of industrial dispute, the dispute or difference must be between the employer and the workman. Who is a workman has been defined under Sec. 2(S) of the I.D. Act, 1947. After analysing the evidence on record, I have held that a workman Shri Marcelino Rebello is not a "workman" as defined in Sec. 2(s) of the Act. This being the case, the dispute which is referred by the Government is not an industrial Dispute and therefore, the reference made by the Government is bad in law and not maintainable and the same is liable to be rejected. I therefore, hold that the reference made by the Government is not maintainable and answer the issue No. 2 accordingly.

13. Since the reference itself is bad in law and not maintainable, the question of deciding other issues, or granting any relief to the workman Shri Rebello does not arise. I therefore, answer the remaining issues accordingly.

In the circumstances, I pass the following order :—

ORDER

It is hereby held that Shri Marcelino Rebello, Sr. Chemist in laboratory of M/s. Sesa Goa Limited, Panjim, is not a workman under the Industrial Disputes Act, 1947. It is hereby further held that the dispute referred by the Government is bad in law and not competent as there is no industrial dispute. The reference made by the Government is therefore rejected.

No order as to cost.

Inform the Central Government accordingly

AJIT J. AGNI, Presiding Officer,

नई दिल्ली, 21 मई, 1998

का०आ० 1227.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ए० पी० मिनरल डेवलपमेन्ट कारपोरेशन लि० के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निम्नलिखित औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-5-98 को प्राप्त हुआ था।

[सं० एल-29012/87/97-आई०आर० (विषय)]

के० बी० बी० उण्णी, डैस्क अधिकारी

New Delhi, the 21st May, 1998

S.O. 1227.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of

A. P. Mineral Development Corporation Ltd., and their workman, which was received by the Central Government on 21-5-1998.

[No. L-29012/87/97-IR (Misc.)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

PRESENT :

Sri V. V. Raghavan, B.A., LL.B.,
Industrial Tribunal-I, Hyderabad.

Hyderabad, the 18th March, 1998

INDUSTRIAL DISPUTE NO. 3 OF 1998 BETWEEN :

The President,
A.P.M.D.C. Staff and
Workers Union,
P. O. Management,
Cuddapah Distt. (A.P.) . . . Petitioners

AND

Vice-Chairman and M. D.,

A. P. Mineral Development Corp.
(A State Govt. Undertaking)
Pancom Business Centre,
2nd and 3rd Floors,
H. No. 8-3-945, Ameerpet,
Hyderabad-500016. . . . Respondent

APPEARANCES :

None for the petitioner.

A. Sudarshan Reddy, Advocate for the respondent.

AWARD

The Govt. of India, Ministry of Labour, New Delhi by its order No. L-29012/87/97-IR (Misc.) dt. 29-1-98 referred the following dispute U/s. 10(1)(d) and 2(A) of Industrial Disputes Act, 1947 to this Tribunal for adjudication :

"Whether the action of the management of Andhra Pradesh Mineral Development Corporation Ltd. in not accepting the request made by S/Shri A. Nageswara Rao, K. Satyanarayana and B. Veeraiah vide their letter dated 27-3-1996 requesting the Vice Chairman and Managing Director, Andhra Pradesh Mineral Development Corporation Ltd. to withdraw their letter dated 5-3-1996 ontng for Voluntary Retirement is justified ? If not. to what relief the three workmen are entitled to ?"

2. After receipt of the above reference this Tribunal issued notice to both the parties, and they received the same. Neither the petitioner union nor the concerned workmen appeared before this Tribunal when the matter was called on 15-3-92, though notice was served on the petitioner. On that day, even no representation was made on their behalf. But the respondent appeared and filed vakalat.

3. In view of the above the petitioner/President of the union and the concerned workmen have no interest to prosecute the matter. There is no option to this Tribunal except to close the matter. Hence, reference is closed.

Given under my hand and the seal of this Tribunal, this the 18th day of March, 1998.

V. V. RAGHAVAN, Industrial Tribunal-I

नई दिल्ली, 21 मई, 1998

का.आ. 1228.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-I, हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-5-98 को प्राप्त हुआ था।

[सं. एल-12012/230/94-आई आर (बी-I)]

सनातन, डेस्क अधिकारी

New Delhi, the 21st May, 1998

S.O. 1228.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-I, Hyderabad as shown in the Annexure in the industrial dispute between the employers in relation to the Management, Canara Bank and their workmen, which was received by the Central Government on 20-5-98.

[No. L-12012/230/94-IR (B-II)]

SANATAN, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT
HYDERABAD

PRESENT :

Sri V. V. Raghavan, B.A., LL.B., Industrial Tribunal-I,
Hyderabad.

Hyderabad, the 31st March, 1998

Industrial Dispute No. 90 of 1994

BETWEEN :

The Asstt. Secretary, C. B. Staff Union,
(Read.) Room 2, Unity House,
Abids, Hyderabad.

.. Petitioner.

AND

The Dy. General Manager,
Canara Bank, C. O., 3-5-879,
Ruby House, Opp. Old MLA Qtrs.,
Himayatnagar, Hyderabad-29.

.. Respondent.

APPEARANCES :

S. Siva Prasad, advocate appeared for the petitioner upto passing the Award dt. 8-8-97. Concerned workman appeared after setting-aside the Award.

Sri A. Gopal Reddy, advocate appeared for the respondent upto passing of the Award dated 8-8-97.

M/s. A. K. Jaya Prakash Rao, K. Srinivasa Rao and Harinder Prasad, advocates for the respondent after setting-aside the Award dt. 8-8-97.

AWARD

The Govt., of India, Ministry of Labour, New Delhi by its order No. L-12012/230/94-IR(B-II) dt. 15-11-94 referred the following dispute U/s. 10(1)(d) and 2(A) of the Industrial Disputes Act, 1947 to this Tribunal for adjudication :

"Whether the action of the management of Canara Bank, Hyderabad in imposing the punishment of stoppage of three increments on Shri K. Banerjee clerk is justified. If not, what relief is the said workman entitled to?"

Both the parties appeared and filed their pleadings.

2. The concerned workman K. Banerjee filed the claim statement contending that the charges levelled against him are false and incorrect. The respondent filed a counter contending that the charges levelled against the workmen are proved and the punishment imposed on him is correct.

3. The petitioner examined himself as WW1 on 22-4-96 in part and sought time. Thereafter he did not appear. Hence, the I.D. was closed on 7-8-96 but again restored to file as per orders in I.A. No. 134/96 dt. 19-10-96. The petitioner was again examined on 6-11-96. But the respondent did not appear and cross examine the petitioner. So the matter was reserved for Award on 26-6-97. This Tribunal waited for 14 months to pass an Award. But the respondent did not choose to appear and cross examine the petitioner. Hence an Award was passed on the material available on record on 8-8-97.

4. The Award was sent to the Govt., of India and it in turn publish the award on 17-10-97 vide order No. L-12012/230/94-IR(B-II) dated 18-9-97.

5. The counsel for the respondent filed an I.A. No. 130/97 to set-aside the Award dated 8-8-97, on 11-12-97. The averments in the petition are as follows :

The management is having a good case as the punishment was indicated on the petitioner on the basis of the enquiry report. The adjournments given by this Tribunal were not entered in the diary and hence the respondent could not appear on the dates given by this Tribunal. The absence of the respondent was neither wilful nor wanton but due to the reasons given therein. Hence the Award may be set aside.

6. The petitioner workman filed a counter to it. The petitioner stated that there is no explanation for the delay given in the petition by the management in approaching this Tribunal. He contended that the docket sheets reflects the attitude of the management in this case and Award was passed on merits. Hence, the petition may be dismissed.

7. After the counter is filed in the said I.A., the petitioner workman did not appear before this Tribunal, when the matter was called on 24-2-98 and 19-3-98. Hence, the I.A. 120/97 was allowed on 19-3-98. On that day, the I.D. No. 90/91 was restored to file and the Award dated 8-8-97 is set aside. For cross examination of the workman, the matter was posted to 31-3-98.

8. On 31-3-98, when the matter is called, the workman (WW1) is absent. It is understood from the absence of workmen for the last 4 adjournments in I.A. as well as in I.D. on 31-3-98. The workman has no interest to prosecute the matter though notice served on them. Hence the I.D. is closed.

Given under my hand and the seal of this Tribunal on this the 31st day of March, 1998.

V. V. RAGHAVAN, Industrial Tribunal-I
Appendix of Evidence

Part and parcel of the Award dated 8-8-97.

नई दिल्ली, 21 मई, 1998

का०आ० 1229.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक आफ इंडिया के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-5-98 को प्राप्त हुआ था।

[सं. एल-12012/211/95-आई आर (बी-II)]
सनातन, डेस्क अधिकारी

New Delhi, the 21st May, 1998

S.O. 1229.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Union Bank of India and their workman, which was received by the Central Government on 20-5-1998.

[No. L-12012/211/95-IR(B-II)]
SANATAN, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT
HYDERABAD

PRESENT :

Sri V. V. Raghavan, B.A., LL.B.,
Industrial Tribunal-I.

Dated : 25th day of April, 1998

Industrial Dispute No. 140 of 1996

BETWEEN

The General Secretary,
A.P. Union Bank Employees Association,
R. No. 5,
Sri Rama Towers,
Tilak Road,
Hyderabad. . . Petitioner

AND

The Dy. General Manager,
Union Bank of India,
Zonal Office,
SZ-II, Chandrakiran,
10-A, Kasturba Road,
Bangalore-560001. . . Respondent

APPEARANCES :

M/s. G. Vidyasagar and P. Sudheer Rao,
advocates for petitioner.

M/s. C. R. Sridharan and G. Narender Reddy,
advocates for respondent.

AWARD

The Government of India, Ministry of Labour, New Delhi by its order No. L-12012/211/95 IR(B-II) dt. 26-11-96 referred the following industrial dispute u/s. 10(1)(d) and 2A of Industrial Disputes Act, 1947 for adjudication to this Tribunal.

"Whether the management of Union Bank of India, Hyderabad is justified in terminating the services of Shri A. Vijaya Rao Ex. Attender/Sweeper w.e.f. 6-1-98? If not, to what relief the workman is entitled?"

Both the parties appeared and filed their pleadings.

(2) The Treasurer of the union filed a claim statement contending as follows: The workman Sri Vijaya Rao hereinafter to be called as 'petitioner' has worked as daily wage attender in different branches of respondent Bank as follows :

Branch	Period
Ramkote	18-06-91 to 09-10-91
High Court Branch	07-02-92 to 24-06-92
Dilsukhnagar Branch	25-06-92 to 29-07-92
High Court Branch	30-07-92 to 05-08-92
Dilsukhnagar Branch	06-08-92 (one day)
Service Branch	07-08-92 to 17-08-92
Dilsukhnagar Branch	18-08-92 to 08-11-92
High Court Branch	09-11-92 to 20-11-92
Dilsukhnagar Branch	23-11-92 to 05-12-92
Service Branch	04-01-93 to 06-01-93

The petitioner was not engaged thereafter without assigning any reasons. Thereafter a final representation was made on 8-12-93. As there was no response, the petitioner approached the petitioner-union. The union made representation dt. 19-1-94 and 4-6-94 bringing it to the notice of the Bank that the petitioner worked for 94 days in 1991, 253 days in 1992 and 3 days in 1993 and requested for regularisation of the services of the petitioner. The petitioner has put in more than 240 days prior to the date of his termination on 6-1-93. The petitioner was not paid notice pay or retrenchment compensation as required u/s. 25(F) of the I.D. Act. Subsequent to his termination, the Bank recruited new persons and violated section 25(H) of the I.D. Act. Since the petitioner completed 240 days in the year preceding the date of his termination, he comes within the definition of section 25(B) of I.D. Act. The petitioner worked 253 days without availing weekly holidays and National and festival holidays. If the weekly holidays, National and festival holidays are taken into

account, the number of days the petitioner was engaged would be more than 240 days. Therefore he complied with the provisions of section 25(B) of I.D. Act. Therefore terminating the services of the petitioner is illegal and arbitrary. Hence, an Award may be passed directing the respondent to reinstate the petitioner into service with all consequential benefits including the regularisation.

(3) The respondent filed a counter contending as follows: The petitioner was engaged as casual labour on daily wages and when required by the Bank. There was no work from 6-1-1993 and so he was disengaged. There is no termination. He did not work for more than 240 days in a year between 1991 to 1993. The reference itself is bad in law. The petitioner worked only 38 days in 1991, 217 days in 1992 and one day in 1993. He has no right to be continued in service, as casual labour. He has not completed 240 days in a year. The details of his service given in the petition are not correct. He worked intermittently. There is no retrenchment or termination. He is not entitled to add paid holidays or Sundays for his service U/s. 25(B) of the I.D. Act. His claim is liable to be rejected.

(4) The point for consideration is:

- (1) Whether Sri A. Vijaya Rao was retrenched without following the Sec. 25(F)?
- (2) Whether he is entitled to reinstatement with benefits?

(5) Point No. 1: Mr. Vijaya Rao examined himself as WW1 and filed Exs. W1 to W13. The then two Branch Managers and Incharge Manager of Bank are examined as MWs 1 to 3. The petitioner claims that he worked for more than 240 days preceding 6-1-1993 on which date his services were terminated and it amounts retrenchment as the Bank retrenched him without following procedure prescribed U/s. 25-F of I.D. Act and that he is entitled to reinstatement with backwages. The Bank contends inter alia that the petitioner did not work 240 days continuously in a year and so the petitioner is not entitled for any relief. Section 25-F read as follows:

25-F: Conditions precedent to retrenchment of workmen:—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation

which shall be equivalent to fifteen days average pay (for every completed year of continuous service) or any part thereof in excess of six months; and

- (c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette).

As per the above section, the workman who worked for not less than a year counting backward from the date of termination, cannot be terminated without giving one month's notice or pay for one month and also paying compensation which shall be equivalent to 15 days average pay for every completed year of continuous service. As per Sec. 25-B of I.D. Act, a workman need not work for 365 days to satisfy the requirement of Working for one year. Section 25-B reads as follows:

25-B Definition of continuous service:—For the purposes of this Chapter:—

- (1) a workman shall be said to be in continuous service, for a period if he is, for that period, in uninterrupted service, including service, which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman.
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer:—
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer not less than:—
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days in any other case.
 - (b) for a period of six months, if the workman during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

- (i) ninety five days, in the case of a workman employed below ground in a mine; and
- (ii) one hundred and twenty days in any other case.

Explanation : For the purpose of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which—

- (i) he has been laid off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous year;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so however, that the total period of such maternity leave does not exceed twelve weeks.

(6) Thus the petitioner has to prove that he worked for 240 days counting backwards from 6-1-1993 which is the last date of his work according to him. The learned Advocate for the respondent relied upon the decision in the case of Indian Silk Manufacturing Co. (P) Ltd. vs. Gamprasad R. Jaiswal & Ors. (1997 LLR 1126). Wherein the Division Bench of Bombay High Court held that initially the burden is upon the workman to prove that he worked for 240 days or more and then only the burden shifts to the Management. The petitioner filed Exs. W1 to W3 statements showing the dates on which he worked at different branches of the respondent. He also pleads that he was made to sign as Ashok, Venkatesh, Bhaskar etc. in the vouchers so that he may not make a claim in future. Exs. W1 to W3 are not attested by any Bank Officer. These self serving statements are prepared by the petitioner. Ex. W4 is said to be summary of Exs. W1 to W3. The respondent-Management is also not in a position to produce the entire material before this Tribunal. The then Branch Manager of High Court Branch, Manager of Dilsukhnagar Branch and Accountant of Dilsukhnagar Branch of respondent-Bank are examined as MWs. 1 to 3. They are also not able to produce the entire relevant records. MW1 produced Ex. M1 particulars of daily wages paid to

the petitioner from 18-6-1991 to 6-1-1993. It comes to 110 days. MW2 filed Exs. M3 to M8 paid cash vouchers for the months of June to November, 1992 and deposed that the petitioner worked for 86 days from June, 1992 to October, 1992 and 15 days in November and December 1992. He filed Ex. M9 statement prepared by the Regional Office which discloses that the petitioner worked for 101 days. The respondent is not able to file the relevant vouchers at other branches though the petitioner has admittedly worked in other branches also and though the respondent is directed by this Tribunal in I.A. No. 15/98 to produce the relevant vouchers.

(7) The petitioner filed Ex. W4 statement showing the number of days he worked. This statement has to be accepted as the respondent who is in possession of relevant documents did not file them into this Tribunal. The Supreme Court held in the case of H. D. Singh vs. Reserve Bank of India and others [(1995) 4 Supreme Court cases Page 201 = 1986 (I) LLJ Page 127] that when the employer fails to produce the attendance register to controvert workman's claim that he worked for not less than 240 days in a year, the claim of the workman has to be accepted. The Division Bench of Our High Court also held in the case of K. Chandramma vs. Labour Court-1, Hyderabad Rep. by its Presiding Officer and others [1997(3) ALT 406 (D.B.)] that when the workwoman is illiterate one and not in a possession of any document to prove the length of her service, the burden lies on the employer to produce the record and prove that the woman has not worked in number of days claimed by her. So we accept that the petitioner worked for the number of days shown in Ex. W4, but there is a calculation mistake in Ex. W4. As per the number of days mentioned therein, he worked for 341 days from 18-6-1991 to 6-1-1993 but the days shown are as 320 days in Ex. W4 by the petitioner. As per Section 25F r/w section 25-B, the petitioner should work for 240 days continuously within a period of one year commencing backwards from 6-1-1993. As per Ex. W4 he worked for 97 days upto 9-10-1991. The second spell of his service started on 7-2-1992. So the first spell cannot be taken into consideration. The petitioner claims that he worked 240 days between 7-2-92 to 6-1-1993 though Ex. W4 shows that first 91 days in 1991 is excluded he worked for 223 days only but it is a calculation mistake according to his statement but he worked for 244 days between 7-2-1992 and 6-1-1993. The respondent filed the calendar of 1992 which is marked as Ex. M2. It can be seen that the petitioner claimed to have worked and claimed on 13 Sundays as detailed below between 7-2-92 and 6-1-1993.

1. From 7-2-1992 to 15-2-92	9-2-98	1 Sunday
2. From 26-6-92 to 29-6-92	28-6-98	1 Sunday
3. From 14-7-92 to 29-7-92	19-7-92 & 26-7-92)	2 Sundays
4. From 30-7-92 to 5-8-92	2-8-92	1 Sunday
5. From 7-8-92 to 14-8-92	9-8-92	1 Sunday
6. From 24-8-92 to 30-8-92	30-8-92	1 Sunday
7. From 1-9-92 to 28-9-92	6-9-92 13-9-92 20-9-92 & 27-9-92	4 Sundays
8. From 14-10-92 to 19-10-92	18-10-92	1 Sunday
9. From 2-11-92 to 8-11-92	8-11-92	1 Sunday
		<hr/> 13 Sundays <hr/>

He is entitled to count Sundays and Paid Holidays if he works for 6 consecutive days. The number of Sundays are omitted by the petitioner in Ex. W4 having worked for six days during the period

7-2-1992 to 6-1-1993 (preceding one year of his disengagement). The other paid holidays of the Bank are not mentioned herein due to lack of information.

1. 17-2-1992	to	22-2-1992	worked for 6 days	23-2-92	Sunday
2. 24-2-92	to	29-2-92	-do-	1-3-92	Sunday
3. 9-3-92	to	14-3-92	-do-	15-3-92	Sunday
4. 16-3-92	to	21-3-92	-do-	22-3-92	Sunday
5. 23-3-92	to	28-3-92	-do-	29-3-92	Sunday
6. 20-4-92	to	25-4-92	-do-	26-4-92	Sunday
7. 4-5-92	to	9-5-92	-do-	10-5-92	Sunday
8. 11-5-92	to	16-5-92	-do-	17-5-92	Sunday
9. 18-5-92	to	23-5-92	-do-	24-5-92	Sunday
10. 1-6-92	to	6-6-92	-do-	7-6-92	Sunday
11. 15-6-92	to	20-6-92	-do-	21-6-92	Sunday
12. 26-10-92	to	31-10-92	-do-	1-11-92	Sunday
13. 9-11-92	to	14-11-92	-do-	15-11-92	Sunday
14. 30-11-92	to	5-12-92	-do-	6-12-92	Sunday
					<hr/> 14 Sundays <hr/>

The petitioner also claims that he is entitled to add up Sundays and paid holidays to the actual number of working days in view of position of law. The respondent contends that the petitioner did not work on Sundays as claimed in Ex. W4 and also he is not entitled to add up Sundays, National Holidays and Paid Holidays as there is no statute enabling the workmen in a Bank to claim the said holidays. The petitioner in his evidence as WW1 deposed that he worked on Sundays which are claimed in Ex. W4. In cross-examination on 16-10-1997 he stated that the Bank was closed in the afternoon of Saturdays and on Sundays. He also states that "I agree that I have shown in Ex. W4 that I have not worked on 1-3-92 and 2-3-92. The said days may be Sunday and Monday as suggested. The Bank might have been closed due to holiday on 2-3-92 and the suggestion that the Bank worked on that day but I was not engaged due to lack of work is not correct. It may be that 30th June, 1992 was a Tuesday, I was not engaged on that day. It is not correct to say that I was not engaged on 30-6-92 as there was no work. It must be a holiday for Bank as I was engaged on all the working days". Thus the petitioner's evidence itself discloses that he did not work on Sundays. So 13 Sundays claimed in Ex. W4 have to be excluded. Thus he worked for 231 days only. The learned counsel for the petitioner submitted that as per the statute as well as judicial precedents, the petitioner is entitled to add up Sundays and other public holidays, also as working days, as the workman worked 6 days continuously is entitled to Paid Holiday on 7th day and also the workman is entitled the wages for the National Holidays and Public Holidays declared by the Government from time to time.

8. The principle of adding up Sundays, Public Holidays, was first considered by Supreme Court in the case of H. D. Singh Vs. Reserve Bank of India and other [(1985) 4 Supreme Court cases Page 201 = 1986 (I) LLJ Page 127]. In the said Judgement, the learned Judges held that the appellant therein worked for 202 days from July, 1975 to July 1976 and 52 Sundays and 17 Holidays have to be added for those days, if they are added the workman worked for 271 days. As the Bank did not produce the attendance register and payment registers, the Supreme Court drew an adverse inference against the Bank and held that the workmen therein worked for 271 days. The learned judges Justice O. Chinnappa Reddy and Justice V. Khalid did not give any reason as to why Sundays and Holidays are added to the working days to a workman of a Bank. The above judgement was pronounced on 18-9-1985. However, the same learned Judges gave reasons in the case of Workmen of American Express International Banking Corporation vs. Management of American Express International Banking Corporation [(1985) 4 Supreme Court cases page 71 = 1985(2) LLJ 539] dt. 28-8-1985. The learned Judges posed the

question as to whether Sundays and other holidays for which the wages are paid under the law, by contract or statute, should be treated as days on which the employee 'actually worked under the employer' for the purposes of Section 25-F read with Section 25-B of I.D. Act, in para 2 of the Judgement, considered the Section 25-F and 25-B of the I.D. Act, Sections 16, 17 and 18 of Delhi shops and Establishments Act, 1954 and other cases and held as follows in para 5 of the Judgement—

*** ** ** *

The expression which we are required to construe is 'actually worked under the employer'. This expression, according to us, cannot mean those days only when the workmen worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The learned counsel for the Management would urge that only those days which are mentioned in the explanation to Section 25-B (2) should be taken into account for the purpose of calculating the number of days on which the workmen had actually worked though he had not so worked and no other days. We do not think that we are entitled to so constrain the construction of the expression "actually worked under the employer". The explanation is only clarificatory, at all explanations are, and cannot be used to limit the expense of the main provision. If the expression "actually worked under the workman was in employment and was paid wages—and we see no impediment to so construe the expression—there is no reason why the expression should be limited by the explanation. To give it any other meaning than what we have done would bring the object of Section 25-F very close to frustration. It is not necessary to give examples of how Section 25-F may be frustrated as they are too obvious to be stated."

As per the above judgement to add up Sundays and Holidays where the wage is paid or payable the liability on the Management to pay should be founded on settlement or statute, the workmen need not work on those days. Even if the management did not pay the wages it does not matter, a duty is cast upon the management to pay the wages on Sundays and paid holidays based on settlement or statute. This principle is followed by Rajasthan High Court in the case of M/s. Eicher Goodearth Ltd. vs. Shri Rajendra Kumar Soni and anr. [1993

L.L.R. Page 524 and in the case of Bajrang Lal Vs. Assistant Engineer P.W.D. Sub-Division Sikar & Ors. (1993 LLR Page 739). The learned Advocate for the respondent also relied upon the decision in the case of Malkiat Singh vs. Labour Commissioner and another (1997 LLR Page 358) Punjab and Haryana High Court held that Sundays and other gazetted holidays for which no wages are paid can not be counted for the purpose of determining to whether the workman worked continuously for a period of 240 days. This judgement does not appear to lay the court position of law as the workman might be entitled to wages on Sundays and public holidays as per the settlement or statute and the employee might not have approached any court of law.

From the above decisions it is clear that the workman should be entitled to wages on Sundays and Public Holidays either under settlement or statute. Otherwise he cannot add them up for arriving at 240 days. The workman is entitled to paid holidays after working for 6 days continuously either on the notified public holidays or under the Factories Act or under the Shops and Establishments Act or Payment of Wages Act or settlement between the Management and the Union. In our present case the petitioner-workman has not filed any settlement entered into between the management and the workman which enabled the workman to claim for wages for Sundays and Public Holidays. The award called as Sastry Award etc. are also not filed to substantiate the case of the petitioner. The Bank is not a factory and so the Factories Act does not apply to the parties. The Supreme Court held in the case of C.V. RAMAN ETC. vs. MANAGEMENT OF BANK OF INDIA AND ANOTHER AND OTHER BANKS batch (AIR 1988 SC Page 1369) that the State Bank of India and other Nationalised Bank or Establishments in the Central Government and are exempted from the operation of A.P. Shops and Establishments Act U/s. 64(1) (b) of the said Act. The learned advocate for the petitioner relied upon the decision in the case of

SATTAR SALEH MOHAMMAD (A) AND ANOTHER vs. REGHUBIR THAKUR AND OTHERS (1963 (1) LLJ Page 67 wherein the Patna High Court held that agricultural labour who come under the Scheduled Employment are entitled to weekly holiday under the Minimum Wages Act. But the Government of A.P. added 54 Employments to Schedule Part-I of Minimum Wages Act, 1948 vide page No. 67 of book of the law of Minimum Wages in Andhra Pradesh 9th edition, 1997 authorised by veula Jaganathana Rao and published by Asia Law House. Item No. 25 page no. 67 of that Book refers to employment in any shops and commercial establishments not being employment in any Bank or employment which included under any of the other entries in the schedule to the Ac. Thus the Banks are excluded from the operation of the Minimum wages Act, 1948. It is therefore held that the minimum wages does not apply to the Bank employees.

10. The petitioner failed to establish that he worked for 240 days in an year preceding the date of his termination. He is entitled to add up the Sundays and Public Holidays as they are not covered by any settlement or agreement or any statute.

11. The learned Advocate for the respondent also relied upon the decision in the case of SUR ENAMEL AND STAMPING WORKS LTD vs. THE WORKMEN (1963 (7) F.L.R. Page 236 (SC) for the proposition that the workman must prove that he worked for a period of not less than 12 calendar months and next that during those 12 calendar months had worked for not less than 240 days. When he worked for less than 12 calendar months, he cannot claim the benefit of working 240 days within the section 25-B of I.D. Act. This proposition of law that as the workman worked for 11 months though more than 240 days the workman is not entitled the benefit U/s. 25-B of the I.D. Act is no longer good law. In view of the latest decision of Supreme Court by Justice O. Chinnappa Reddy and Justice V. Khalid in the case of Workmen of American Express International Banking Corporation vs. Management of Internal Banking Corporation (1985) 4 SCC Page 71).

12. The learned advocate for the respondent relied upon the decision of Supreme Court in the

case of DELHI DEVELOPMENT HORTICULTURE EMPLOYEES UNION vs. DELHI ADMINISTRATION, DELHI & ORS. (1992 (II) LLJ 452) wherein the learned Judges held that the workmen who are not sponsored by the Employment Exchange and who are not qualified cannot be regularised in any service though they have worked 240 days or more. The Supreme Court directed the Employer to keep to employees who have completed 240 or more days in a panel and if registered with Employment Exchange and if qualified give them a preference for an appointment against regular vacancies. This decision is sought perhaps to meet the reliefs sought for in the claims statement for regularisation of the petitioner-workman.

13. The sum and substance of the above discussion is that the petitioner failed to prove that he worked for 240 days in an year preceding the date of his termination. So Section 25-F need not be followed by the respondent.

14. Point No. 2 : An Award is passed holding that the petitioner Vijaya Rao is not entitled to any relief.

Dictated to the Steno-typist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal on this the 25th day of April, 1998.

V. V. RAGHAVAN, Industrial Tribunal-I

Appendix of Evidence

Witnesses examined for petitioner :

WW1 : A. Vijaya Rao.

Witnesses examined for respondent :

MW1 : R. Uday Bhaskara Rao

MW2 : K. Madhusudhanachari

MW3 : B. Ravichandra

Documents marked for the petitioner

Ex. W1 : Leaf let of Register proforma maintained by WW1 at Ramkote Branch.

Ex. W2 : Leaf let of Register proforma maintained by WW1 at High Court Branch.

Ex. W3 : Leaf let of Register proforma maintained by WW1 at High Court Branch.

Ex. W4 : Statement of working days particulars prepared by WW1.

Ex. W5 : Representation dt. 9-12-93 given by WW1 to the Dy. General Manager, Union Bank of India.

Ex. W6 : Bio Data of WW1.

Ex. W7 : Educational certificate enclosed to Ex. W5.

Ex. W8 : Xerox copy of the representation dt. 19-1-94 given by the General Secretary to the Dy. G. M. Union Bank of India Zonal Office SZ-I, Bangalore.

Ex. W9 : —do— dt. 4-6-94.

Ex. W10 : Representation dt. 8-8-94 made to the ACL (C) by the General Secretary of the Petitioner—Union.

Ex. W11 : Views of the Management before ACL, Hyderabad.

Ex. W12 : Minutes of conciliation of ACL(C).

Ex. W13 : Failure report submitted by DCL, Hyderabad on 22-5-95.

Documents marked for the respondent

Ex. M1 : Statement showing the particulars of working days of WW1.

Ex. M2 : Xerox copy of Calendar for the year 1992.

Ex. M3 : Bunch of Petty cash vouchers for the month of June '92.

Ex. M4 : —do— July '92.

Ex. M5 : —do— Aug. '92.

Ex. M6 : —do— Sep. '92.

Ex. M7 : —do— Oct. '92.

Ex. M8 : —do— Nov. '92.

Ex. M9 : Statement of working days of Sri A. Vijaya Rao from June, 1991 to May, 1992.

नई दिल्ली, 21 मई, 1998

का.आ.1230-औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद

में औद्योगिक अधिकरण- I' हैदराबाद के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 20-5-98 को प्राप्त हुआ था ।

M/s. K. Srinivasa Murthy and G. Sudha,
Advocates for the evidence.

AWARD

[सं. एल-12012/124/97-आई आर (बी-II)]
सनातन, डेस्क अधिकारी

New Delhi, the 21st May, 1998

S.O. 1230.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-I, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Syndicate Bank and their workman, which was received by the Central Government on 20-5-98.

[No. L-12012/124/97-IR (B-II)]
SANATAN, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I, HYDERABAD

PRESENT :

Sri V. V. Raghavan, B.A., LL.B.,
Industrial Tribunal-I, Hyderabad.
Dated : 19th day of February, 1998
Industrial Dispute No. 70 of 1997

BETWEEN :

State Secretary, Syndicate Bank
Employees' Union,
Near Pragati College,
Kandaswamy Lane, Hanuman Tekdi,
Hyderabad-500195 ... Petitioner

AND

The Dy. General Manager,
Syndicate Bank, Pioneer House,
Zonal Office, Somajiguda,
Hyderabad-500195 ... Petitioner

APPEARANCES :

None for the petitioner.

The Govt. of India, Ministry of Labour, New Delhi, by its order No. L-12012/124/97/IR(B-II) dt. 28-11-97 referred the following dispute U/s. 10(1)(d) and 2(A) of the Industrial Disputes Act, 1947 to this Tribunal for adjudication :

“Whether the action of the management of Syndicate Bank, Banganapalle Branch in dismissing Sh. K. Bhaskar Rao from service is legal and justified ? If not, to what relief the workman is entitled ?”

2. After receipt of the above said reference this Tribunal issued notice to both the parties. The same was received by them. When the matter was called on 19-1-98, the petitioner union and concerned workman were not present, though notice was served on them. The respondent was present and filed vakalat. Again this Tribunal issued fresh notice to the petitioner. Though notice was served on him, he did not appear and prosecute the matter on 19-2-98. It is understood neither the petitioner union nor the concerned workman is interested to prosecute the matter. Therefore, there is no option except to close the reference. Hence, the I. D. is closed.

Given under my hand and the seal of this Tribunal, this the 19th February, 1998.

V. V. RAGHAVAN, Industrial Tribunal-I

नई दिल्ली, 26 मई, 1998

का.आ. 1231—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत गोल्ड माईन्स लि. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-5-98 को प्राप्त हुआ था ।

[सं. एल-43012/31/95-आई आर (बिविध)]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 26th May. 1998

S.O. 1231.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bharat Gold Mines Ltd. and their workman, which was received by the Central Government on the 26-5-98.

[No. L-43012/31/95-IR (Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

Present :

Sri V. V. Raghavan, B.A., LL.B.,

Industrial Tribunal-I,

Dated : 25th day of April, 1998

INDUSTRIAL DISPUTE NO. 71 OF 1996

BETWEEN :

Shri Jayaraman P.E. No. 1211153

Ex. U/g Gen. Labour,

Chigaragunta Project BGML,

K.G.F.

... Petitioner

AND

The Chief Personnel Manager,

Bharat Gold Mines Ltd., ARGENT,

Gorgeon (PO) K.G.F. 563120. ... Respondent

APPEARANCES :

Sri K. Venkateswara Rao, Advocate for the
Petitioner.

M/s. V. Rajagopal Reddy and Mrs. Preeti
Reddy, Advocates for the Respondent.

AWARD

The Government of India, Ministry of Labour,
New Delhi by its Order No. L-43012/31/95-IR
(Misc.) dt. 30-5-1996 referred the following in-
1611 GI/98—10

dustrial dispute under Section 10(1)(d) and 2A
of Industrial Disputes Act, 1947 for adjudication
to this Tribunal.

“Whether the action of the management of
Chigaragunta Project, BGML, Chigara-
gunta, Chittoor Dist. in dismissing the
services of Shri Jayaraman, Ex. Gen-
Labour, BGML, Chigaragunta is legal
and justified ? If not what relief work-
man is entitled to ?”

Both the parties approved and filed their
pleadings.

2. The workman filed a Claims Statement con-
tending as follows :

The workman Mr. Jayaraman hereinafter called
as ‘Petitioner’ has been working as Drilling Opera-
tor in Kolar Gold Fields from 1976 to 1991. He
worked in Rajasthan in 1983 and West Bengal in
1985. He was Drawing the monthly wages of
Rs. 2185/- in 1991. The Management issued a
show cause notice on 26-12-1991 alleging
in the enquiry, the Enquiry Officer found him
guilty of the charges levelled against him.
He submitted his reply to the show cause notice
issued to him by the Management. Without
considering it, he was dismissed from service
by an order dt. 21-1-92. Before issuing the
dismissal order no enquiry was conducted
as per law. Therefore it is void and the
order is liable to be set aside. The petitioner is a
poor workman having the responsibility of feeding
a large family. His absence during the period in
question is neither wilful nor negligent and he was
ill for some days. He applied for leave with medi-
cal certificate, to the Management. The order of
dismissal may be set aside and the respondent may
be directed to reinstate him and other attendant
benefits.

3. The respondent filed a counter contending as
follows :

The averments in the petition that he submitted
a reply to the show cause notice and without con-
ducting enquiry, he was dismissed from service, is
not correct. The petitioner worked as casual labour
and he was absent for 182 days between April,
1991 and November, 1991 without prior permis-

sion or leave granted. The petitioner was absent on several occasions which resulted in dislocation of work. It is a misconduct as per Standing Orders 20(b) and 30. So he was served with charge sheet dt. 2-12-91. He gave a reply on 5-12-91 stating that he could not report for duty due to domestic problems. However an enquiry was conducted against the petitioner, and the witnesses were examined. He was found guilty of the misconduct by the Enquiry Officer. So a show cause notice dt. 26-12-91 was given to him. He submitted a reply dt. 11-1-92 to it. As the management is not satisfied with the said explanation, he was dismissed from service. There are no merits and valid grounds in the claim petition. Hence the petitioner is not entitled to any relief.

4. The respondent filed a record of domestic enquiry into this Tribunal. The enquiry was conducted with regard to the validity of the domestic enquiry. The petitioner examined himself as WW1 and the responden examined its Personnel Manager as MW1 and the then Assistant Personnel Manager as M.W. 2. They marked all the relevant documents. Both the parties were heard and by an order dt. 5-2-1998 this Tribunal held that the domestic enquiry is valid after following the principles of natural justice and Standing Orders. Then both the parties are heard on merits of the case.

5. The point for consideration is whether the petitioner is entitled to reinstatement, with back-wages and other attendant benefits ?

6. POINT : The petitioner joined the Kolar Gold Fields in 1976 and he has been working in Chigaragunta in Kupparam Taluk of Chittoor District. The Manager of Bharat Gold Mines submitted Ex. M1 details of the petitioner on 2-12-1991 mentioning therein that in between April, 1991 and November, 1991 the petitioner absented for 182 days. The Dy. General Manager (MP & TS) served Ex. M2 show cause notice under Order 20(b) and (30), dt. 2-12-91 calling upon the petitioner to show cause as to why the disciplinary action should not be taken against him. The petitioner gave Ex. M3 reply dt. 5-12-91 admitting that he absented from duty due to domestic problems but requested the Officer to excuse him and send him to work. The Dy. General Manager was not satisfied with the explanation and also did not punish the petitioner on his admission.

He ordered for a domestic enquiry by the Asstt. Personnel Manager by Ex. M4 dated 6-12-1991.

7. The Enquiry Officer questioned the petitioner on 10-12-91 whether the petitioner pleaded guilty. He expressed that he does not intend to engage anybody to assist him in the defence and pleaded guilty. In spite of plea of guilt, the Enquiry Officer examined Mr. V. Bakthavastlam a Roll Clerk and D. Anandan Manager, Mine II, to speak to the absence of the petitioner from duty. The petitioner did not cross-examine them. The petitioner gave his evidence pleading that he absented from duty for some months due to family troubles. He admitted his mistake but sought excuse. The petitioner promised to be regular in duty in future. Exs. M5 to M8 are the relevant documents. Thereupon the Enquiry Officer submitted Ex. M11 report with the finding that the charges are proved. Thereupon the Dy. General Manager issued Ex. M9 show cause notice mentioning the previous punishments also and asking the petitioner to show cause as to why he should not be dismissed from service. The petitioner again pleaded in Ex. M10 reply that he could not attend to duty due to family problems and he may be excused. Nonetheless he was dismissed from service by Ex. M12 order dt. 21-1-92. Thereafter this dispute was raised.

8. The contention of the learned Advocate for the petitioner is that the petitioner's signatures were taken on some blank papers and whole record was created. This contention cannot be accepted for two reasons. Firstly there is no foundation for his plea in the claims statement. Secondly the explanation to the charge sheet and explanation to the final show cause notice were given by the petitioner when he was not in service as it is not known whether he was permitted to resume duty after serving the charge sheet. There is no material that he was dismissed from service on his explanation or that he was permitted to resume duty. He is not under the control of anybody. It cannot be said that he was made to admit the absentee. A new plea is also raised in his evidence that he was made to work at the house of the Officer when the writer marked the absence to him. There is no foundation for the same. The alleged sickness of the petitioner is not proved. I, therefore hold that the charge is proved against the petitioner.

8. The next question is whether the petitioner deserves dismissal from service. His previous misconduct and the punishments are referred to in Ex. M9 show cause notice as follows :

- 16-7-82 severely warned for absence. Suspended two working days.
- 28-12-84 suspended four working days for absence.
- 5-10-85 suspended two working days for absence.
- 10-12-87 suspended two working days for absence.
- 18-2-88 suspended for one day for absence.
- 21-7-88 suspended for three days for absence.
- 7-9-89 suspended four days for absence.
- 14-2-90 suspended four days for absence.
- 7-5-90 suspended four days for absence.
- 15-6-90 Reduced one increment from 1100/- to 1080/-.
- 25-7-90 Reduced one increment from 1080/- to 1060/-.
- 13-10-90 Suspended four working days for absence.
- 21-6-91 Basic pay reduced from 1060/- to Rs. 1020/-.

The above punishments are also borne out by Ex. M15 Service Card of the petitioner. It can be held that the petitioner is a chronic absence and we will be doing disservice to the management by ordering his reinstatement. However the petitioner served for 14 years having joined the services of the respondent on 4-10-1977. Dismissal from service is also a harsh punishment.

10. An Award is passed directing the management to treat the petitioner was compulsory retired from service on 1-4-1991 and pay all the amounts due to him as per the service conditions of the respondent.

Dictated to the Steno-typist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 25th day of April, 1998.

V. V. RAGHAVAN, Industrial Tribunal-I

Appendix of evidence

Witness examined for petitioner :

WW1 : Jayaraman

Witness examined for Respondent :

MW1 : N. Balasubramanyam

MW2 : V. R. Narayanan.

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

- Ex. M 1 : Signature portion of WW1 on attendance details sheet of WW1.
- Ex. M 1(a) : Attendance details of WW1 dt. 2-12-91.
- Ex. M2 : Signature of WW1 on show cause notice issued to WW1.
- Ex. M2(a) : Show cause notice issued to WW1 dt. 2-12-91.
- Ex. M3 : Signature of WW1 on his representation made to DGM (MP & TS) Chigargunta Projects.
- Ex. M3 (a) : Representation of WW1 to DGM, dt. 5-12-91.
- Ex. M4 : Signature of WW1 on the notice of enquiry.
- Ex. M4(a) : Enquiry notice issued to WW1 on 6-12-91.
- Ex. M5 : Signature of WW1 on Enquiry Proceedings.
- Ex. M5 (a) : Enquiry proceedings sheet.
- Ex. M6 : Signature of WW1 on the deposition of V. Bakthavastalam.
- Ex. M6 (a) : Deposition of Sri V. Bakthavastalam in the enquiry.
- Ex. M7 : Signature of the petitioner on his statement.
- Ex. M7 (a) : Statement of the petitioner in the enquiry.
- Ex. M8 : Signature of the WW1 on the deposition of D. Anandan.
- Ex. M8(a) : Deposition of D. Anandan in the enquiry.
- Ex. M9 : Signature of WW1 on show cause notice.
- Ex. M9(a) : Notice of show cause dt. 26-12-91 regarding proposed punishment to be taken against WW1.
- Ex. M10 : Signature of WW1 on the letter given by WW1.

Ex.M10(a): Letter dt. 11-1-91 given by WW1 to D.G.M. BGL.

Ex.M11: Enquiry report submitted by Enquiry Officer.

Ex.M12: Dismissal order dt. 21-1-92 issued to workman (WW1).

Ex.M13: Returned regd. cover sent to the petitioner.

Ex.M14: —do—

Ex.M15: Service card of the petitioner.

Ex.M16: Attendance register for the month of May, 1991.

Ex.M17: —do— June, 1991.

Ex.M18: —do— August, 1991.

Ex.M19: —do— September, 1991.

Ex.M20: —do— October, 1991.

Ex.M21: —do— November, 1991.

Ex.M22: Copy of the standing orders of the company.

Sd. Illegible

INDUSTRIAL TRIBUNAL-I, HYD.

नई दिल्ली, 26 मई, 1998

का.प्र. 1232—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नोर्थन रेलवे, इलाहाबाद के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-5-98 को प्राप्त हुआ था।

[संख्या एल-41012/71/96-आई आर (बी)/बी-1]

पी.जे. माईकल, डेस्क अधिकारी

New Delhi, the 26th May, 1998

S.O. 1232.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Northern Railway, Allahabad and their workman, which was received by the Central Government on 25-5-1998.

[No. L-41012/81/96 IR(B)/B-1]
P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SHRI B. K. SRIVASTAVA PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT DEOKI PALACE ROAD PANDU
NAGAR KANPUR

Industrial Dispute No. 73 of 1997

In the matter of dispute :

BETWEEN

Amarnath S/o Vishva Nath Gupta
C/o Shri D. K. Jha
All India Carriage and
Wagon Staff Counsel
T-46 G.T. Road
Ganges Floor Mill ke Samne
Kanpur.

AND

Divisional Railway Manager
Northern Railway
Allahabad.

APPEARANCE :

Shri D. K. Jha—for the workman.

None—for the management.

EX-PARTE

AWARD

1. Central Government Ministry of Labour New Delhi vide its Notification No. L-41012/71/96-I.R. (B) dated 25-4-97 has referred the following dispute for adjudication to this Tribunal :

Kya Mandal Rail Prabandhak Uttar Railway Allahabad aur Loco Foreman Uttar Railway Kanpur ke dwara Shri Amar Nath S/o Shri Vishva Nath Gupta ko wash boy ko dinank 22-11-83 naukri se nikala jana vaidhanik avam nayochit hai? Yadi nahi to Sambandhit अधिकारी kis anutosh ka hakdar hai?

2. The case of the concerned workman Amar Nath is that he was engaged as Wash Boy in Canteen running in Steam Loco Shed Northern Railway at Kanpur. He worked there upto 11-10-80. Thereafter he remained on leave because of illness of his father. The Canteen was closed on 16-6-81. It was reopened on 22-11-83. The applicant was again engaged on 3-9-83. There after he was again removed from service w.e.f. 22-11-83. He made representation. Ultimately he was asked to undergo in medical examination in March 1988. Since no job was provided to him his termination on is had being in breach of provision of Section 25-F, 25-G and 25-H I. D. Act.

3. Repeated opportunities were given to the opposite party. Railway to file written statement but they failed to do so. Hence case proceeded exparte against them.

4. In support of his case the concerned workman Amar Nath has examined himself as WW-1. Besides he has filed Ext. W-1 to Ext. W-18.

5. It will be evident that termination is of the year 1983 where as reference has been claimed in 1997. There is no sufficient explanation for this delay. In the absence of such sufficient explanation I hold that claim is stale and does not call for determination of rights. Hence the reference is answered again the concerned workman on the ground that it is stale and the concerned workman is not entitled for any relief.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 26 मई, 1998

का.प्र. 1233—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल रेलवे, मथुरा के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-5-98 को प्राप्त हुआ था।

[संख्या एल-41012/128/95-आई आर (बी-1)]

पी.जे. माईकल, डेस्क अधिकारी

New Delhi, the 26th May, 1998

S.O. 1233.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Central Railway, Mathura and their workman, which was received by the Central Government on 25-5-1998.

[No. L-41012/128/95-IR (B-I)]
P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SHRI B. K. SRIVASTAVA PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT DEOKI PALACE ROAD PANDU
NAGAR KANPUR

Industrial Dispute No. 82 of 1996

In the matter of dispute :

BETWEEN

Ramesh S/o Harshe
C/o Rajveer Singh Solanki
2/236 Namber Agra.

AND

A.E.N.
Central Railway
Junction Mathura.

APPEARANCE :

Shri B. R. Sisodiya—for the workman.
Shri Hamid Quraish—for the management.

AWARD

1. Central Government Ministry of Labour, New Delhi vide its Notification No. L-41012/128/95-I.R. (B-I) dated 27-8-96 has referred the following dispute for adjudication to this Tribunal :

Whether the action of the management of AEN Central Railway Mathura Junction in terminating the services of Shri Ramesh Casual Khalasi and also not to provide him benefits of temporary status is legal and justified ? If not to what relief he is entitled to ?

2. It is unnecessary to give the details of the case as on 4-3-98 Au. Rep. of the concerned workman has not press the case. Hence the reference is answered against the concerned workman and he is not entitled for any relief.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 26 मई, 1998

का.प्र. 1234—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उत्तर रेलवे, इलाहाबाद के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-5-98 को प्राप्त हुआ था।

[संख्या एल-41011/14/96—आई आर बी/(बी)-I]
पी. जे. माइकल, डेस्क अधिकारी

New Delhi, the 26th May, 1998

S.O. 1234.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government

hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Uttar Railway, Allahabad and their workman, which was received by the Central Government on 25-5-1998.

[No. L-41011/14/96-IR (B)/(B-I)]
P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SHRI B. K. SRIVASTAVA PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT PANDU NAGAR, KANPUR
Industrial Dispute No. 214 of 1997

In the matter of dispute :

BETWEEN

Shri D. K. Jhan Karyakari Adhyaksh
All India Railway Employees Confederation
T-546 G.T. Road, Kanpur.

AND

Mandal Rail Prabandhak
Uttar Railway
Allahabad.

EXPARTE-AWARD

1. Central Government, Ministry of Labour, vide Notification No. L-41011/14/96-I.R. (B) dated 1-10-97, has referred the following dispute for adjudication to this Tribunal—

Kya Mandal Railway Prabandhak Uttar Railway Allahabad ke dwara 14 karmcharyo vivaran anulagnak me diya hai ko unki temporary status diya jane ki tarikh se niyमित na kiya jana uchit aur vaidhanik hai ? Yadi nahi to sambandhit karmchary kis anutosh ke haqdar hai ?

2. In this case there are 14 workmen viz. Ram Shivjor, Narendra Prasad, Mohan Lal, Subhash Chandra Asthana, Satyanarain, Ramayan Prasad, Hiralal Sah, Dashrath Ram, Sanchit Ram, Santanan Sharma, Girja Shanker, Rajendra Prasad, Dhaniram and Tej Bahadur. Their case is that of them were engaged between 1976 to 1988 as casual labourers by the opposite party Northern Rly. through D.R.M. Allahabad. Ultimately they were given temporary status in the year 1984. Out of them Ram Shiv Jor Mahendra Prasad and Mohanlal were posted at Kanpur under Signal Engineer Northern Rly. Kannur whereas remaining were engaged at Mahanagar Project New Delhi. Ram Shivjor Mahendra Prasad and Mohan Lal were sent for screening whereas 11 workmen were also sent for screening in October, 1996. But so far their results have not been declared inspite of repeated demand. Hence they claimed that it should be assumed that they had cleared the screening test and as such are entitled for regularisation.

3. The opposite party was given repeated opportunity to file written statement but the same could not be filed hence the case proceeded exparte against them.

4. In support of their case, the concerned workman had examined Ramshivior WW-1 besides W-1 to W-11 documents have been filed. From this unrebutted evidence it is established that the concerned workman were given temporary status in 1994 and were also screened. The opposite party railway has not submitted any reply to show if these workmen had cleared the test or not. In its absence I am inclined to accept the version of the concerned workmen and hold that they cleared the test. Accordingly my award is that they will be entitled for regularisation within one month from the date of publication of award.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 26 मई, 1998

नई दिल्ली, 26 मई, 1998

का.आ. 1235—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उत्तर रेलवे, लखनऊ के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-5-98 को प्राप्त हुआ था।

[संख्या एल-41012/46/95-आई. आर. (बी-1)]

पी.जे. माईकल, डेस्क अधिकारी

New Delhi, the 26th May, 1998

S.O. 1235.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Uttar Railway, Lucknow and their workman, which was received by the Central Government on 25-5-1998.

[No. L-41012/46/95-IR (B-I)]
P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SHRI B. K. SRIVASTAVA PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT DEOKI PALACE ROAD PANDU
NAGAR KANPUR

Industrial Dispute No. 51 of 1996

In the matter of dispute :

BETWEEN

Zonal Working President
Uttar Railway Karamchhari Union
96/196 Roshan Bajaj Lane
Ganesh Ganj Lucknow.

AND

Senior Divisional Personnel Officer
Uttar Railway D.R.M. Office
Hazratganj Lucknow.

APPEARANCE :

Shri P. K. Tiwari—for the workman.
Km. Suman Gupta—for the management.

AWARD

1. Central Government, Ministry of Labour, New Delhi vide its Notification No. L-41012/46/95-I.R. (B-I) dated 22-4-96 has referred the following dispute for adjudication to this Tribunal :

Whether the action of the management of Northern Railway, Lucknow in not stepping up pay to Shri Sampat Gateman to bring him at par when the wages being paid to another Gateman Shri Devi Sahay is just and legal? If not to what relief the workman concerned is entitled to?

2. It is unnecessary to give the details of the case as on 18-3-98 the An. Rep. of the concerned workman has stated that he has no instructions. Hence reference is answered against the concerned workman and he is not entitled for any relief.

B. K. SRIVASTAVA, Presiding Officer

का.आ. 1236—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नोर्दन रेलवे, लखनऊ के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-5-98 को प्राप्त हुआ था।

[संख्या एल-41012/48/95-आई. आर. (बी-1)]

पी.जे. माईकल, डेस्क अधिकारी

New Delhi, the 26th May, 1998

S.O. 1236.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Northern Railway, Lucknow and their workman, which was received by the Central Government on 25-5-1998.

[No. L-41012/48/95-IR (B-I)]
P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SHRI B.K. SRIVASTAVA, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, PANDU NAGAR, KANPUR
Industrial Dispute No. 122 of 1995

In the matter of dispute :

BETWEEN

Sri Bhai Lal son of Sri Huba, Debi Khara
Post Office, Bangla Bazar, Distt. Lucknow.

AND

Senior Civil Engineer (Construction)
Northern Railway, Lucknow.

AWARD

1. Central Government, Ministry of Labour, vide Notification No. L-41012/48/95-I.R. (B-I) dated 13-10-95, has referred the following dispute for adjudication to this Tribunal--

Whether the action of the Sr. Civil Engineer (Const.), Northern Railway, Lucknow is legal and justified to retrench the services of Sri Bhai Lal, mason w.e.f. 1-3-84 and also not to grant him temporary status on completion of over 120 days continuous service with the management? If not, to what relief he is entitled to?

2. The concerned workman Bhai Lal has worked as mason under Sr. Civil Engineer Construction Northern Railway from 22-5-81 to 28-2-84, thereafter his services were terminated in utter breach of provisions of Section 25-F I.D. Act, inasmuch as retrenchment compensation and notice pay was not given to him.

3. The opposite party has filed reply in which it is alleged that the claim is more than 10 years old and is highly belated. Old records are also not available. In any case the concerned workman was engaged on project, his services were brought to an end after completion of project, hence provisions of Section 25-F of I. D. Act would not apply to it.

4. In the rejoinder nothing new has been alleged.

5. It will be evident that reference is highly belated as it is more than ten years old. No explanation worth the name for this delay has been given. In the case of UPSEB versus Presiding Officer, 1998 (98) FLR, 511 and further in the case of State of Punjab versus Kalidas, FLR, 1979 (76) 955 (P&H), it has been held that reference beyond three years are

belated and as such no relief should be granted. Any way I am of the opinion that this claim being more than 10 years old is highly belated and no explanation has been given for this delay. In this way this reference is highly belated and on this score alone in view of above ruling the concerned workman is not entitled for any relief.

6. On facts too the concerned workman has examined Bhai Lal as WW-1. I have gone through the evidence. He has not stated even a single word about the Breach of Section 25-F of I. D. Act by stating that no retrenchment compensation and notice pay was given to him. Further from the evidence of K. S. Sharma Section Engg. MW-1. It is established that the concerned workman was engaged in certain project. Provision of Section 25-F of I. D. Act would apply to such a case of appointment.

7. Thus my finding is that in the first place provision of Section 25-F of I. D. Act would not apply to the case of the concerned workman. In the second place provisions of Section 25-F of I.D. Act has not been proved.

8. In the end my award is that termination of the concerned workman is not bad and he is not entitled for any relief.

H. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 26 मई, 1996

का.अ. 1237.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार छत्रसाल ग्रामीण बैंक, जालौन के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-5-98 को प्राप्त हुआ था।

[संख्या एल-12012/149/90-आई०आर०बी-3/बी-1]

पी.जे. माइकल, डेस्क अधिकारी

New Delhi, the 26th May, 1998

S.O. 1237.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Chatrasal Gramin Bank, Jalaun and their workman, which was received by the Central Government on 25-5-1998.

[No. L-12012/149/90-IR B. 3/B-II]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SHRI B. K. SRIVASTAVA PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DEOKI PALACE ROAD, PANDU NAGAR, KANPUR

Industrial Dispute No. 260 of 1990

In the matter of dispute

BETWEEN

Rajendra Prasad Pathak,
S/o V. N. Sekhri,
26/104, Birhana Road,
Kanpur
AND
Chairman,

Chatrasal Gramin Bank,
Head Office Orai,
Distt. Jalaun.

Appearance :

Shri V. P. Srivastava for the workman.

Shri M. K. Verma for the Management.

AWARD

1. Central Government Ministry of Labour, New Delhi vide its Notification No. L-12012/149/90-I.R. (B-3) dated 24-10-90 has referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management of Chhatrasal Gramin Bank, Orai in terminating the services of Shri Rajendra Prasad Pathak, Ex-Clerk-Cum-Cashier, w.e.f. 1-4-85 is justified? If not to what relief the workman is entitled to?”

2. The case of the concerned workman Rajendra Prasad Pathak is that he was engaged as clerk-cum-cashier on 15-6-84 at Shijahari branch of the opposite party Chatrasal Gramin Bank, Orai and he worked upto 14-9-84. Thereafter he was again engaged on 1-11-84 to 31-3-85 continuously. In this way he has completed more than 240 days in a year. His services were terminated in breach of provision of Section 25F I.D. Act, as no retrenchment compensation and notice pay was given. Beside there has been breach of Sections 25-G and 25-H I. D. Act.

3. The opposite party has filed written statement in such it has been alleged that the concerned was engaged to do cashier nature of work. He was never appointed as clerk-cum-cashier. After regularly recruited clerk-cum-cashier was engaged the concerned workman was removed from service. It is denied that there has been breach of Section 25F, 25G and 25H I.D. Act.

4. In the rejoinder nothing new has been alleged.

5. The first point which needs consideration is as to whether the concerned workman was engaged as casual worker or as a clerk. In this regard there is evidence of concerned workman Rajender Prasad Pathak and the evidence of Vijay Kumar Tripathi MW(1). However there is document Ext. M-1 to Ext. M-11 which goes to show that the concerned workman was engaged as clerk-cum-cashier. In view of the admission alone it is held that the concerned workman was engaged as clerk-cum-cashier

6. The concerned workman Rajendra Prasad Pathak WW(1) has stated that he has worked for 233 days. In this regard an application was given that this statement has been wrongly recorded. I do not find sufficient ground hence this application is rejected. The facts remain that the concerned workman had completed 230 days. Hence provision of Section 25F I.D. Act are not attracted.

7. There is no proof about the provision of Section 25G I.D. Act.

8. Still there is un rebutted evidence of Rajendra Prasad Pathak WW(1) that after his removal from

service Khoob Chand Gupta was engaged but he was not given opportunity. Vijai Kumar Tripathi MW(1) has also not given opportunity. Vijai Kumar Tripathi MW(1) has also not denied this fact. Hence the evidence of the concerned workman is un rebutted. In this way breach of provision of Section 25-H I.D. Act is proved.

9. In view of above discussion my award is that the removal of the concerned workman is bad in law and he will be entitled for reinstatement.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 26 मई, 1998

का.आ. 1238.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रानी लक्ष्मीबाई क्षेत्रीय ग्रामीण बैंक, झांसी के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-5-98 को प्राप्त हुआ था।

[संख्या एल-12012/20/96-आई. आर बी/बी-1]

पी.जे. माईकल, डेस्क अधिकारी

New Delhi, the 26th May, 1998

S.O. 1238.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Rani Laxmi Bai Kshetriya Gramin Bank, Jhansi and their workman, which was received by the Central Government on the 25-5-98.

[No. L-12012/20/96-IR B (B-I)]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SHRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 58 of 1997

In the matter of dispute

BETWEEN

Nirmal Kumar Jain,
S/o Sri Chand Naram Jain,
Village Vardha Tahsil Lalbihat,
District Lalitpur.

AND

Chairman,
Rani Laxmi Bai Kshetriya Gramin Bank,
Gwalior Road,
Jhansi.

AWARD

1. Central Govt. Ministry of Labour, New Delhi, vide notification no. L-12012/20/96-I.R. (B) dated 25-3-97, has referred the following dispute for adjudication to this Tribunal—

“Whether the action or the management of Rani Lakshmi Bai Kshetriya Gramin Bank, Jhansi in terminating the services of Sri Nirmal Kumar Jain, peon at Head Office w.e.f. 26-8-85 is legal and justified? If not, to what relief the workman is entitled?”

2. The case of the concerned workman is that he was engaged as a water boy-cum-messenger by the opposite party Rani Lakshmi Bai Kshetriya Gramin Bank Jhansi and was asked to work at Kalyanpur branch of the bank. He joined on 31-1-84. Later on the Chairman of the branch asked him to report for duty at Head Office. It is pertinent to note that date of this instruction as has not been given. It is further alleged that he joined at Head Office on 25-11-84 and he worked there upto 25-8-84, when his services were brought to an end by oral order. It is further alleged that salary for the period 25-11-84 to 25-8-85 was not paid to him, hence he had filed a claim under Payment of Wages Act which was awarded and later on wages were paid. Thus he had completed 240 days in a year preceding the date of termination, hence this termination is bad being in breach of provisions of Section 25-F of I. D. Act.

3. The opposite party has filed reply. In the first place it is alleged that reference is highly belated and as such is bad in law. On facts it is alleged that he was engaged in place of Awadhesh Kumar but he did not join from 31-1-84. On 27-3-84 he applied for leave due to illness and did not join at all. Ultimately he joined on 14-8-84 at Sojana Branch. It is denied that at any stage chairman had instructed the concerned workman to join at Head Office. The concerned workman after joining on 14-8-84 did not turn up for duty after 31-10-84. Thus it will be seen that the concerned workman had not worked at all. After 31-10-1984 he had abandoned the job.

4. In the rejoinder, nothing new has been alleged.

5. The concerned workman has examined himself as W.W. 1. Besides he had filed documents Ext. W-1 to W-6. In rebuttal the management examined Pradip Kumar besides Ext. M-1 to M-56 have been filed. Ext. M-1 to M-55 are the payment vouchers whereas Ext. M-56 is the leave application of the concerned workman.

6. Pradip Kumar Gupta, M.W. 1 had stated that the concerned workman had not joined from 31-1-84 whereas Nirmal Kumar Jain the concerned workman had stated that he had joined on 31-1-84. Ext. M-56 is the copy of application by the concerned workman on 27-3-84 in which he has shown his inability to join because of his illness. This letter belies the evidence of the concerned workman and as such I hold that the concerned workman had not joined the services earlier than 14-8-84.

7. Next point to be seen is as to whether the concerned workman had worked from 14-8-84 to

25-8-85. In support of his version the concerned workman has filed the copy of judgment of the prescribed authority dated 11-12-91 by which he was awarded wages for the above mentioned period. The management has informed that writ petition is pending against this judgment after appeal was dismissed by the District Judge. Thus this order of the prescribed Authority has not become final. In any case, it will not operate as resjudicata as prescribed authority is not competent to decide the present reference. The plea of resjudicata applies where the court which had passed the earlier decree was also competent to decide the subsequent suit. As observed earlier prescribed authority has no jurisdiction to adjudicate hence the order of the prescribed authority will not operate as resjudicata.

8. On merits the management witness has stated that he had worked from 14-8-84 upto 31-10-83 whereas the concerned workman has stated that he had continuously worked from 14-8-84 to 25-8-85 I am inclined to believe the version of the management as it is supported by the vouchers Ext. M-1 to Ext. M-55. Further the concerned workman would not have remained silent for such a length of time if he had actually worked and had not paid wages. Hence, it is held that the concerned workman had not worked upto 25-8-85 at all. In fact he had abandoned the job as alleged by the bank. In this way he had not completed 240 days in a year as such he is not entitled for benefit of Section 25-F of I. D. Act.

9. The management has also raised the plea that reference is highly belated. It is true that reference is belated but there is satisfactory explanation for the same. The concerned workman had earlier filed the suit in the court of Munsif Jhansi which was returned for presentation in the proper court. In this way the delay stands explained. Hence the reference cannot be defeated on this ground.

10. In the end from the above discussion, my award is that there had been no termination of services of the workman. Instead he had left the job of his own. Hence, he is not entitled for any relief.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 27 मई, 1998

का.आ. 1239.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पांडेयन ग्रामा बैंक, सातुर के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, तमिलनाडु, मद्रास के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-5-98 को प्राप्त हुआ था।

[संख्या एन-12012/63/87-डीआईवी(ए)/आई आर बी आई]

पी.जे. साहकल, डैस्क अधिकारी

New Delhi, the 27th May, 1998

S.O. 1239.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the

Industrial Tribunal, Tamil Nadu, Madras as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Pandyan Grama Bank, Sattur and their workman, which was received by the Central Government on the 26-5-98.

[No. L-12012/63/87-DIV(A)/IR B-I]

P. J. MISHAEL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL,
TAMIL NADU, MADRAS

Wednesday, the 22nd day of January, 1998

Present :

Thiru S. Ashok Kumar, M.Sc., B.L., Industrial Tribunal.

INDUSTRIAL DISPUTE NO. 96 of 1989

(In the matter of reference in the dispute for adjudication under Section 10(1)(d) of the I.D. Act, 1947 between the Workmen and the Management of Pandyan Grama Bank, Sattur).

BETWEEN

Shri A. Lawrence Pannercselvam,

S/o. Arockiam, Sawariaspattinam,

Sonnavali, viz., Ramanathapuram Distt.-623 358
Tamil Nadu

Vs.

The Chairman,

Pandyan Grama Bank,

Sattur 626 203.

Reference :

Order No. L-12012/63/87-DIV(A)/IR(B)-I,
Ministry of Labour, dated 12-10-89, Govt.
of India, New Delhi.

This dispute coming on for final hearing on Tuesday, the 23rd day of December 1997, upon perusing the reference the claim, counter statement and all other material papers on record, upon hearing the arguments of Tvl. K. Chandru, D. Bharathy & R. Sivakumar, Advocate appearing for the petitioner and of Thiru S. Vaidyanathan, Advocate appearing for the respondent management, and this dispute having stood over till this day for consideration, this Tribunal made the following

AWARD

This reference has been made for adjudication of the following issue :

"Whether the action of the management of Pandyan Grama Bank, Sattur in terminating the services of their workman Shri A. Lawrence Pannercselvam w.e.f. 24-6-86

is justified? If not, to what relief the workman concerned is entitled?"

On service of notices both the petitioner and respondent appeared before this Tribunal and filed their claim and counter statement respectively.

3. The main averments found in the claim statement filed by the petitioner are as follows: The petitioner was appointed as a daily deposit collection agent (Nitham Vataridhi Mukavar) in the year 1984 at the Keelakottai, branch Thiruvadanai taluk. As per the terms of appointment, the petitioner will have to canvass for deposits from various people and daily go to their houses/shops and collect amounts. The petitioner will have to make out a challan and deposit the same amount the next day in the branch. The petitioner roughly had about 150 customers who were covered by the deposit scheme. The petitioner had to pay a sum of Rs. 1,000 towards security deposit which will be retained by the bank. Each day a corresponding entry has to be made by the petitioner in the pass book kept in the custody of the depositors. Thus the petitioner's work involved canvassing, deposit mobilisation, travel, clerical entries in various pass books and challans and also stand security for the amounts collected from the customers. The petitioner is a workman within the meaning of Sec. 2(s) of the I.D. Act, 1947. The petitioner's work was exemplary and at times his work was commended by the Inspecting Officer, because at times the petitioner's daily collection went up from Rs. 1400 to Rs. 1800 a day. Due to the local political atmosphere and being a person belonging to the same village as that of the Branch Manager of the Keelakottai branch, the Branch Manager became enigmatically disposed towards the petitioner and started making false complaints to the head office. The petitioner is not aware of any of the contents of any of these complaints. The petitioner was stopped from work w.e.f. 24-6-86. No order of termination was given to him. When the petitioner went to the bank and insisted upon a written order to be given, the petitioner was not only physically removed from the branch but a Police complaint against the petitioner was also given by the Branch Manager, and thereafter the petitioner could not go to the Bank. The petitioner's efforts to get a written order of termination was of no avail. Thereafter, a petition was sent to respondent on 20-12-86 under Certificate of Posting and copy of that was also marked to various Directors. A copy of the same was also marked to Asstt. Commissioner Labour (Central), Sastri Bhawan, on the same day. But, no action was taken by the respondent till date and no response was received from Assistant Labour Commissioner (Central). Thereafter a dispute was raised by the petitioner before the Assistant Commissioner of Labour on 24-5-87. An objection regarding the maintainability of the dispute was raised by the respondent-management. As the conciliation talks failed, failure report was sent by him on 18-8-87 to the Government of India. But the Central Government by an order dated 3-11-87 refused to refer the dispute on the ground that the petitioner was not a workman within the meaning of Sec. 2(s) of the I.D.

Act. A Writ petition (W.F. No. 2992/89) was filed by the petitioner before the Hon'ble High Court, challenging the action of the Government in not referring his case for adjudication. The said writ petition was heard by a Division bench and by judgment dt. 11-8-89, directed the Central Govt. to refer the same for adjudication. The respondent bank is created under the Regional Rural Banks Act, 1976 and it is a statutory body created by the Act of Parliament. The rules and regulations framed under the Act are done by the Central Government and they are statutory in character. The respondent bank being a statutory creation is also a 'state' within the meaning of Article 12 of the Constitution. The respondent cannot act arbitrarily and such an action on the part of the respondent is also violative of Art. 14 of the Constitution. If the petitioner's termination is on account of any alleged misconduct, an opportunity ought to have been given to the petitioner, and even on this account, the termination is opposed to the principles of natural justice. It is a termination within the meaning of Sec. 2(oo) of the I.D. Act and the non-compliance of Sec. 25-F of the Act would make the order void ab-initio. The respondent's action in orally terminating the services of the petitioner without any written orders and subsequently giving a newspaper advertisement in the local Tamil paper (Dinamalar, Madurai edition dated 3-7-86) amounts of vindictiveness on the part of the respondent bank. The absence of their giving any written order to the petitioner is only to prevent the petitioner from seeking lawful remedies available to him. The petitioner's attempt to secure the employment through his representation/appeal were not fruitful. The petitioner prays to pass an award holding the termination of the petitioner as not justified and direct the respondent to reinstate the petitioner with continuity of service, backwages and other attendant benefits and costs.

4. The main averments found in the counter statement filed by the respondent are as follows:

The reference itself is incompetent because the petitioner whose dispute has been referred for adjudication is not a 'workman' under Sec. 2(s) of the I.D. Act, 1947. The petitioner was only a commission agent. The Central Government Industrial Tribunal, Madras by its award dated 18-1-85, in I.D. No. 20/83, relating to the Syndicate Bank, Madras and in the award dt. 18-1-85 in C. No. 1/82 between V. Pala and Indian Bank, has relying upon several decisions of the Supreme Court, held that daily deposit collection agent, is only appointed on commission basis and Bank cannot exercise any control over them. Hence they are not workmen. Hence the reference may be rejected in limine. The petitioner was engaged on 14-4-88 as Daily collection agent at the Keelakottai branch purely on prorata commission through Contract of Agency Agreement dated 14-4-1984 only for NVN Deposit collection and not for performing any job which performs the integral part of the Bank's business. The Bank used to engage agents on a contract of Agency for collecting the amount from the customers and remitting it to the bank. Commission was paid on the basis of the amount so collected from the customers. An Agent will have to pay Rs. 1000 to the Bank as Caution Money Deposit, as he is dealing

with the cash, as per the terms of the contract of Agency. This is only to safeguard the interest of the bank and their customers. It is also a usual clause in any contract of Agency. The Bank has no control over the Agents. It is open for the Agent to work for any other Bank. Neither there are fixed working hours nor can the Bank take any disciplinary action against them. If the Agents commit any irregularity, their contract of agency could be terminated as per the terms of contract. It is open to a customer to deposit the amount through an Agent or they can as well directly deposit the amount in the bank. So, by no stretch of imagination that an Agent engaged on commission basis would become a workman as per Sec. 2(s) of the I.D. Act, 1947. While the petitioner was working as Agent, was not discharging his duties with integrity, and honesty. The petitioner was orally warned and advised many a times, but it was of no avail. Since he was only an Agent, the Bank did not chose to conduct an enquiry to prove the various acts of misconduct committed by the petitioner. It is denied that the petitioner's work was exemplary and due to local political and being the person belonging to the same village as that of the Branch Manager, he became enmically disposed towards the petitioner. While the petitioner was engaged as an Agent, had collected amounts from the customers but failed to handover to the Bank to be deposited in their respective accounts. In one case, he has collected the amount, but failed to handover the entire amount to the bank to be deposited in the respective accounts of the customers of the Bank. Since the petitioner was only an Agent, the Bank did not chose to issue any memo or charge-sheet. If this Tribunal comes to the conclusion that the petitioner is a workman u/s. 2(s) of the I.D. Act, 1947 the respondent may be permitted to let in evidence to establish the misconduct committed by the petitioner. Since complaints were received by the respondent bank about the irregularities committed by the petitioner and as the petitioner has violated the terms of Contract of Agency, the Bank had no other option, except to terminate the Contract of Agency on 24-6-86. Petitioner used to visit the bank even after the contract was terminated, in an intoxicated condition and used to create a scene so the Branch Manager had to lodge a Police Complaint on 19-8-90. Though the petitioner had sent a letter dated 20-12-86 to the respondent, since he was only an Agent and the Contract of Agency was terminated, the respondent though it fit not to give any reply to the petitioner's letter dated 29-12-86. As the petitioner was only engaged as an Agent, on entering into a contract of Agency, since he had violated the terms of Agency, the respondent was forced to terminate the contract of Agency. The alleged violation of Article 14 of the Constitution of India, and Section 25F is without any merit. The Bank can ill afford to have an employee who has misappropriated the amount taken by him by way of collection for the respondent bank, and respondent had lost confidence in him and the petitioner should not be reinstated as it would be detrimental to the interests of the Bank and its customers on whose confidence the Bank rests. Since the respondent bank is answerable to the public and others, after terminating his contract of Agency, by way of abundant caution published it in the newspapers so that customers may not deal with the petitioner who is no more an

Agent of the Bank. This was done only to safeguard the interests of the bank and the customers and not with any ulterior motive. The petitioner is not a workman as defined under the Act. If this Tribunal were to come to a conclusion, that petitioner is a workman the respondent may be permitted to prove the acts of misconduct committed by him while he was an Agent of the Bank. Hence the Industrial dispute may be dismissed as not maintainable.

5. On behalf of the petitioner-workman one witness was examined and Ex. W-1 to W-7 were marked and on behalf of the respondent one witness was examined and Exs. M.1 to M.24 were marked.

6. The Point for our consideration is : Whether the action of the management of Pandyan Grama Bank, Sattur in terminating the services of their workman Shri A. Lawrence Panneerselvam w.e.f. 24-6-86 is justified? If not, to what relief the workman concerned is entitled?

7. The Point :—The petitioner was working as a daily deposit collection agent in respondent Keelakottai Branch from 1984. All of a sudden the petitioner was terminated from services with effect from 24-6-86. The contention of the petitioner is that due to enmity of the branch manager who also belonged to the same village and also due to the local political atmosphere the petitioner was victimised and was stopped from work without any order of termination. The contention of the respondent management is that the petitioner was involved in a criminal case and also misappropriated a total sum of Rs. 155 from three customers and hence he was terminated from service.

8. A perusal of all the documents and evidence would show that no order of termination of service was given to the petitioner. There is no dispute that the petitioner was employed as a daily deposit collection agent in the respondent branch at Keelakottai. Prior to his appointment the petitioner was employed in the bank of Tamil Nadu at R. S. Mangalam branch as found from Ex. M.3 appointment letter dated 24-1-84. On 17-3-86 the Sub Inspector of Police, R. S. Mangalam has sent a letter to the Branch Manager stating that the case has been registered against the petitioner in Crime No. 29/86 u/s. 325 and 323 I.P.C. on 7-3-86. In the said letter, the Sub Inspector of Police has recommended the Branch Manager to suspend the petitioner. A copy of the said Ex. M.20 letter has also been sent to the Head Office. On 18-3-86 i.e. very next day, the Head Office asked the Branch Manager of Keelakottai to stop the petitioner from engaging in any collection of N. K. M. deposit, with immediate effect. In this connection, it is pertinent to note that on 18-3-86 there was no complaint of any malpractice or misappropriation by the petitioner. The petitioner was neither arrested nor remanded to judicial custody. The petitioner was implicated in a case which arose due to panchayat election. Without actual arrest and detention of the petitioner the Sub-Inspector of Police has requested the higher authorities as well as the Branch Manager of the respondent to suspend the petitioner from service. The respondent has also failed to make any enquiry with regard to the involvement of the petitioner on the

alleged criminal case and suspended him the very next day, though no formal suspension order was issued to the petitioner. The fact that he was suspended could be seen from Ex. M.21 letter of the branch Manager dated 13-6-86 wherein it is mentioned "after N.V.M. agent suspension was known to the public." This it could be seen that the petitioner was suspended even on 18-3-86 on the report of the Sub Inspector of Police, and not for any misconduct or misappropriation of Rs. 155 as alleged now. After suspending the petitioner on 18-3-86, by a letter dated 13-6-86, the Branch Manager has sent Ex. M.21 letter wherein it is alleged that he has misappropriated Rs. 30 in pass book No. 165 of Thirru Raja Mohammed, M.B.B.S., he has misappropriated Rs. 100 in the account No. 184 belonging to Ameer Sultan and misappropriated Rs. 25 in account No. 175 belonging to Mr. N. S. Bahurudeen. Subsequently on 18-7-1986 the branch manager has given a complaint to the Inspector of Police R. S. Mangalam stating that from 24-6-1986 the petitioner has been removed from service and that on 18-7-1986 he came to the bank and used abusive language. The said complaint is Ex. M. 23 and the receipt issued by Police is Ex. M. 22. Based on the above complaint the R. S. Mangalam Police Station have registered a case against the petitioner in Crime No. 127/86 u/s. 75 of the Madras City Police Act. The said case has been registered after a long delay on 19-8-1986. The said F. I. R. is Ex. M. 5. Apart from the delay in registering the case against the petitioner, the section under which the case has been registered against the petitioner is not maintainable. There is no doubt that Madras City Police Act has not been extended to R. S. Mangalam in Ramanathapuram District. However, on 3-7-1986 the respondent-management has issued a paper publication in Dinamalar daily stating that the petitioner has been permanently terminated from service with effect from 24-6-1986 and that the public should not make any contribution to him. The said publication is marked as Ex. M. 4. Prior to 24-6-1986 the alleged date of termination of service of the petitioner, no order of termination has been given to the petitioner. No charge of the alleged misappropriation has been made against the petitioner. No enquiry was conducted against the petitioner. No complaint was received either from Bahurudeen or from Ameer Sultan or from Dr. Raja Mohammed. Only after suspending the petitioner from his service on the report of the Sub-Inspector of Police, complaints have been received by the branch manager from the above said three persons. The contention of the learned counsel for the petitioner that after suspending the petitioner the branch manager used his influence to receive the complaints from the above persons by allowing them loan facilities and thus the branch manager due to enmity with the petitioner created such documents cannot be simply brushed aside as one without substance. The respondent has neither issued any suspension order on the petitioner on 18-3-1986 nor termination order on 24-6-1986. Therefore, the suspension was not for any misconduct in the course of employment of the petitioner. Suspension was due to a police case in the Panchayat election which has nothing to do with the petitioner's employment in the respondent-management. Subsequently after

keeping the petitioner under suspension and without framing any charge and without conducting any enquiry, the respondent has terminated his service with effect from 24-6-1986. Now before this Court the respondent has examined M.W. 1 to prove the allegations of misappropriation of Rs. 155/- from three customers mentioned earlier. None of the three customers whose money is said to have been misappropriated by the petitioner have been examined as a witness before this Court. The receipt as well as the counter rolls alleged to have been issued by the petitioner have not been produced before this Court. Even assuming that the alleged misappropriation of Rs. 155 is proved, the same was not a cause for the dismissal of the petitioner. Therefore, the dismissal of the petitioner without framing any charge and conducting any enquiry is *vioid-ab-initio*.

9. The next contention of the respondent-management is that the petitioner is not a workman as defined u/s. 2(s) of the I. D. Act, 1947. The law is well settled that the person working on commission basis in the schemes like Tiny Deposit Schemes or Nitham Valar Nidhi are also workman as defined by the I. D. Act and the Hon'ble Madras High Court in 1990 1 LLJ Page 50 has held "that such deposit collection agents are workmen as defined u/s. 2(s) of the I. D. Act."

10 In 1985 11 LLJ Page 184, In the Supreme Court of India (Civil Appellate Jurisdiction) [Civil Appeal No. 480(N) of 1973 dated 12th March, 1985] present : Mr. Chief Justice Y. V. Chandrachud, Mr. Justice D. A. Desai, Mr. Justice Amarendra Nath Sen. Between Shankar Dass and Union of India and another, it has been held as follows :

"The power under Art. 311(2)(a) has to be exercised fairly, justly and reasonably, A Government servant who is convicted for traffic offence cannot be dismissed under Art. 311(2)(a). Government servant is not entitled to be heard on the question of penalty under Art. 311(2)(a) but the right given under Art. 311(2)(a) to impose penalty carries with the duty to act justly. Therefore, the Government should apply its mind to the penalty which could be appropriately be imposed even where a Government servant is convicted for an offence by a Criminal Court.

On facts held, the punishment of dismissal imposed on the Government Servant is whimsical and the same has to be set aside the Government servant acted under force of adverse circumstances when he committed the offence of breach of trust."

In the above case the appellant has misappropriated Rs. 500/- and he was released u/s. 4 of the Probation Offenders Act, 1958. Though the guilt was proved as against the appellant, the Hon'ble Supreme Court has held that the punishment of dismissal of service is excessive and that the appellant should be reinstated in service with full back wages. In this case there is no proof that the petitioner misappropriated Rs. 155/-. Even if the petitioner failed to remit the amount as alleged the punishment of dismissal is shockingly disproportionate. Under Rule 28 of Nitham Valar Nidhi (a) if the collection agent

fails to remit the collections of the day before the banking hours in the next day he/she will loose 50% of the commission on the amount collected. (b) In the case of default exceeding one day he/she will loose the entire commission." In this case the petitioner was all of a sudden suspended from service on 18-3-1986, even though the three amounts in which the petitioner failed to remit the small amounts matured only after May, 1986. Without hearing the petitioner he has been terminated from service also. Subsequently on 3-11-1990 the petitioner has paid Rs. 30/- to Dr. Raja Mohammed as seen from Ex. M. 10. There was no opportunity to the petitioner to remit these amount before the closure of the accounts since he was kept under suspension. The respondent management has neither issued the suspension order issued any order terminating the service of the petitioner. But without any enquiry they have made publication in Dehinamalar Daily dated 3-7-1986. On perusal of the entire records, it shows that the branch manager has played an active role, in doing away with the petitioner's service. The respondent has neither followed Section 25-F of the I. D. Act, by way of paying any compensation. Hence I hold that the termination of the petitioner's service is unjustified and the petitioner is entitled to be reinstated in service with full backwages and other attendant benefits. Award passed accordingly. No costs.

Dated, this the 21st day of January, 1998.

THIRU S. ASHOK KUMAR, Industrial Tribunal.

WITNESSES EXAMINED

For Petitioner-workman :

W. W. 1 Th. A. Lawrence Panneerselvam.

For Respondent-management :

M. W. 1 : Th. A.R. Arunachalam.

DOCUMENTS MARKED

For Petitioner-workman :

Ex. W.-1/24-5-87 : Letter from petitioner to the conciliation officer regarding his non-employment (copy).

W.-2/18-8-87 : Conciliation failure report (copy).

W.-3/3-11-87 : Government of India's order refusing to refer the dispute (copy).

W.-4/9-12-83 : Selection order to the petitioner (copy).

W.-5/14-4-84 : Appointment order issued to the petitioner (copy).

For Respondent-management :

Ex. M. 1/12-4-79 : Rules and Procedures of the Nitham Valar Nidhi scheme (xerox copy).

M.-2/16-11-82 : Letter from petitioner requesting to consider him for appointment as commission Agent (xerox copy).

M.-3/24-1-84 : Internal correspondence of the management regarding appointment of the petitioner (xerox copy).

M.-4/3-7-86 : Advertisement given in 'Dinamalar' paper regarding dismissal of the petitioner (xerox copy).

M.-5/19-8-86 : F.I.R. given by the respondent (xerox copy).

M.-6/18-8-87 : Conciliation failure report (xerox copy).

M.-7/series : Extracts from the Pass book, register and complaint of misappropriation of NVN a/c. No. A-175. (Xerox copy).

M.-8/ : Extracts from the pass book of NVN A/c. No. 176 (xerox copy).

M.-9/17-5-86 : Letter from K. Raja Mohammed alleging omission entry (xerox copy).

M.-10/ : Receipt dated 3-11-1990, for Rs. 30/- received from the petitioner (xerox copy).

M.-11/ : Extracts from the Register (xerox copy).

M.-12/ : Extracts from the Pass-book of NVN a/c. No. A-184 (xerox copy).

M-13/28-6-86 M-14/3-11-90 : Complaint letters dated 28-6-1986 and 3-11-1990 of NVN A/c. No. A-184 (xerox copies).

M.-15/ : Extracts from the Register of NVN A/c. No. A-184.

M.-16/17-2-86 : Daily collection list submitted by the petitioner (xerox copy).

M.-17/18-2-86 : Daily collection list submitted by the petitioner (xerox copy).

M.-18/26-2-86 : Daily collection list submitted by the petitioner (xerox copy).

M.-19/18-3-86 : Letter from the Head Office to the Branch Manager advising to stop engaging the petitioner (xerox copy).

M.-20/17-3-86 : Letter from the Sub-Inspector of Police. (xerox copy).

M.-21/13-6-86 : Branch Manager's reply (xerox copy).

M.-22/18-7-86 : Acknowledgement for having received the complaint from the Branch Manager (xerox copy).

M.-23/18-7-86 : Branch Manager's complaint to the Police (xerox copy).

M.-24/18-7-86 : Nitham Valar Nidhi Scheme (xerox copy).

Sd./-

I. T.

नई दिल्ली, 27 मई, 1998

का.मा. 1240.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ इंडिया, हैदराबाद के प्रबन्ध तंत्र के संबंध

नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण-I, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-5-98 को प्राप्त हुआ था।

[संख्या एल-12012/142/87-आई.आर. (बी-1)]

पी.जे. माइकल, डेस्क अधिकारी

New Delhi, the 27th May, 1998

S.O. 1240.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal-I, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of India, Hyderabad and their workman, which was received by the Central Government on the 26-5-1998.

[No. L-12012/142/87-IR (B. I.)]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

PRESENT :

Sri V. V. Raghavan, B.A., LL.B.,
Industrial Tribunal-I.

Dated : 1st day of May, 1998
Industrial Dispute No. 13 of 1996

BETWEEN

The State Bank Employees Union,
Peddibhatlavari Street,
Vijayawada-520002. . Petitioner

AND

The Regional Manager,
Region-IV,
State Bank of India,
Bank Street,
Hyderabad-500007. Respondent

APPEARANCES :

Sri C. Suryanarayana Advocate for Petitioner, M/s. B. G. Ravinder Reddy and S. Prabhakar Reddy, Advocates for the Respondent.

AWARD

The Government of India, Ministry of Labour, New Delhi by its Order No. L-12012/142/87-IR (B. I) dt. 15-2-96 referred the following Industrial Dispute under Section 10(1)(d) of Industrial Disputes Act, 1947 for adjudication to this Tribunal :

“Whether the action of the management of State Bank of India in terminating the

services of Shri S. Sathiah is legal and justified? If not, to what relief is the workman entitled?”

Both the parties appeared and filed their pleadings.

2. The union filed a claims statement contending as follows : The workman S. Sathiah, hereinafter called as ‘Petitioner’ was continuously employed as Temporary Mazdoor with effect from 26-12-80 upto 28-4-82 but the Officers of Sankarampeta Branch have shown in their petty cash register as having employed only for 121 days. He was paid wages for some days in fictitious names such as ‘Madhusudhan’, ‘T. Chandraiah’, ‘T. Shankar’, ‘S. Satyanarayana’, ‘Sudharshan’, ‘Somaiah’, ‘V. Somaiah’ and ‘Bala Krishna’ in various spells. The petitioner was not given any appointment order and he was not required to sign any contract of appointment either for a fixed period or for any indefinite period. But he was terminated from service with effect from 29-4-82. The union raised an Industrial Dispute before the Asst. Labour Commissioner (Central)-II at Hyderabad. The management filed a reply on 24-9-86. The union gave a reply on 1-2-87. The conciliation failed and the Asst. Labour Commissioner forwarded his report to the Government of India. But the Government refused to refer the dispute for adjudication. So the union filed a Writ Petition No. 6984/88 before the Hon’ble High Court of A.P. The reference was made on 15-2-1996 in pursuance to the order of Hon’ble High Court. The petitioner worked more than 240 days and so his termination is in violation of Section 25-F of I.D. Act. He is entitled to reinstatement, continuity of service and backwages.

3. The respondent filed a counter contending as follows : The petitioner worked only for 121 days in the year 1981-82. The allegation that he worked from 26-12-1980 to 28-4-1982 is not correct. The service put in by the petitioner-workman is as under :

January,	1981	..	13
June,	1981	..	2
October,	1981	..	9
November,	1981	..	13
December,	1981	..	13
January,	1982	..	2
February,	1982	..	24
March,	1982	.	26
April,	1982	..	19

121 days

The allegation that the petitioner worked continuously is not correct. He did not work for 240 days. He is not entitled to any relief.

4. The petitioner filed reply affidavit contending as follows : The petitioner was engaged as tempo-

rary mazdoor as admitted by the Bank. He worked for more than 90 days. Hence he is entitled for absorption in the Bank in accordance with the orders of Ministry of Finance, Department of Economic Affairs (Banking Division) New Delhi vide letter No. F. 3/J/104/87-IR dt. 6-8-90 (as per enclosure). It is necessary to call for the records relating to the vouchers of payment of wages on which his signatures were obtained in his own name and also in the name of others, in addition to the various registers like the day book, the Secondary Statement in Form-8, all debit and credit vouchers, the petty cash register and remittances made at James Street Branch of S.B.I., as well as Market Street Branch of SBI at Secunderabad together with the relevant records of these two branches for the period from 26-12-80 to 28-4-82 and 13-5-82 to enable him to show his handwriting and signatures. It is necessary to verify the writing in the records and compare his handwriting to find out whether the petitioner was employed for more than 240 days either in his name or in any fictitious names.

5. The petitioner summoned and examined the then Branch Manager Sankarampet Branch from December, 1980 to February, 1982, the then Cashier of Sankarampet Branch from 26-12-1980 to May, 1982 and the then Branch Manager, Sankarampet Branch from 22-2-82 to 10-10-83 as W.Ws. 1 to W.W. 3 respectively. The petitioner examined himself as W.W. 4. He filed Exs. W1 to W3. The respondent examined the present Branch Manager of Sankarampet Branch as M.W. 1 and filed Exs. M1 to M8.

6. The point for consideration is whether the petitioner is entitled to reinstatement with consequential benefits?

7. POINT: Admittedly the Branch of State Bank of India was opened at Sankarampet in Medak District on 26-12-1980. The posts of Branch Manager and Head Cashier were only sanctioned to this Branch at that time as it was only a small branch. However M.W. 1 deposed that this Branch being 'C' Grade Branch would have the Manager, Head Cashier, one Clerk and one Messenger. The permission given by the R.B.I. for opening this branch consequential order passed by the Management of the Bank for opening branch, and book of instructions etc., to know the sanctioned strength of the Bank are not filed into this Tribunal. However, it can be seen from the evidence of W.W. 3, the then Branch Manager who succeeded WW1, there is post of Messenger also and when a regular messenger was appointed, he terminated the services of petitioner.

8. The contention of the petitioner is that he worked for more than 240 days from the date of opening the branch on 26-12-80 upto 28-4-82 and his services were terminated on 29-4-1982 without following Section 25-F of the I.D. Act.

The Bank contends that the petitioner worked for 121 days only. The respondent filed Ex. M3 bunch of vouchers passed by the petitioner. At the request of the petitioners, the Bank also produced Ex. M8 Bunch of vouchers passed by V. Somaiah, T. Chandraiah, S. Satyanarayana, T. Shankar, V. Sudharshan and K. Madhusudhan. Though the petitioner contended that he passed these receipts in the name of other fictitious persons in his claims statement and his evidence, he did not recall himself and depose in this Tribunal that he made the signatures in Ex. M8 bunch of receipts after they are filed into this Tribunal on 21-4-1998. The learned Advocate for the petitioner endorsed on the memo filed by the respondent, that the signatures were verified by the petitioner and that the signatures of fictitious persons were made by the petitioner only. It is not evidence. The petitioner has to recall himself and speak to the fact that he signed the names of Somaiah, Chandraiah, Madhusudhan etc., at the instance of WW1 and WW3 Branch Managers. He should make himself available for cross-examination by the respondent. He is also to get the signature compared by handwriting expert if he so chooses and examine the expert in this Tribunal. I have seen the admitted signatures of the petitioner in Ex. M3 bunch of receipts. He signed in English with good efficiency. The signatures in Ex. M8 vouchers are either in Telugu or in English and to the naked eye they do not appear to have been put by the petitioner. So this contention of the petitioner is rejected.

9. Another contention of the petitioner is that he made entries in Ex. W1 and W2 Dav Books on particular days. The petitioner himself as WW4 deposed to the same. Though WW1 the then Branch Manager was summoned by the petitioner he is almost a witness for the Bank. He deposed as follows: "Ex. W1 and W2 are savings Bank day Book Nos. 1 and 2 for the period from 26-12-80 to December, 1983. They are supposed to be maintained by the clerk-cum-cashier. I cannot tell whether the entries dt. 27-12-80 etc., were made by the petitioner." W.W. 2 the then Cashier who is supposed to maintain these registers deposed that the petitioner himself made his entries. No doubt this witness has got an axe to grind against Bank as he was dismissed from service for misappropriation. Nonetheless neither WW1 nor WW3 and MW1 who are supporting the Management have stated that these entries were not made by the petitioner. They simply plead ignorance. The Bank did not get these entries verified by handwriting expert to prove that WW2 the then Cashier himself made these entries but he is giving false evidence as he was dismissed subsequently. It is also in the evidence of W.W. 3 the successor to WW1 as Branch Manager that either himself or WW2 have to make entries in Exs. W1 and W2 Day Books and he cannot say whether the petitioner made these entries and he cannot identify the

handwriting. He admits that the petitioner worked continuously on all the working day from 1-4-1982 to 28-4-1982.

10. In the above circumstances, the evidence of petitioner that he worked for more than 240 days has to be accepted. Admittedly he was terminated without any notice or compensation, in violation of Section 25-F of I.D. Act. He is entitled to reinstatement as daily wages casual worker to be employed as and when there is work. A daily rated casual employee to be employed as and when there is work only. There is no guarantee that he would have work everyday. The petitioner has not placed any material before this Tribunal that somebody else was appointed on daily wage after 29-4-82. So he is not entitled to back wages. He is entitled to continuity of service notionally. The petitioner also referred the relief of regularisation under the instructions given by the Government of India on 6-8-90 with regard to the temporary employees who worked for more than 90 days. There is no reference on this aspect. There is no pleading also in initial claims statement. So the petitioner cannot take advantage of the letter of the Central Government in this I.D. He has to raise another Industrial Dispute if he is so advised. The decision of His Lordship Justice M.H.S. Ansari in W.P. No. 15555/93 dt. 28-3-1997 a private copy of which is filed into this Tribunal with a memo of arguments, is not applicable to the facts of this case, as the petitioner over relied upon the instructions of the Government of India with regard to the workman who worked for 90 days and above at the earlier stage. It was raised for the first time in the reply affidavit.

11. In the result, an award is passed directing the respondent to reinstate the petitioner Sathaiah as daily casual messenger in any Branch in Andhra Pradesh and provide him as and when there is work. The petitioner is entitled to continuity of service as his services were terminated illegally.

Dictated to the stenotypist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 1st day of May, 1998.

V. V. RAGHAVAN, Industrial Tribunal-I
Appendix of evidence

Witness examined for
petitioner

WW1 : P. Srihari Rao

WW2 : S.N.V.S. Prasad Varma

WW3 : K. Lakshmi Kantha Rao

WW4 : S. Sathaiah

Witness examined for
respondent

MW1 : R. Nageswara Rao

Documents marked for the petitioner

Exs. W1 & 2 : Savings Bank's Day Book
Nos. 1 & 2 for the period from 26-12-80
to December 1983.

Ex. W3 : Govt. of India's Circular dt. 6-8-90
with regard to recruitment and absorption
of temporary employees in Public
Sector Banks (typed copy).

Documents marked for the Respondent

Ex. M1 : Charge sheet dt. 3-1-90 issued to
WW2.

Ex. M2 : Letter dt. 23-10-91 of the Bank re-
jecting the appeal of WW2.

Ex. M3 : Bunch of vouchers (59 vouchers).

Ex. M4 : Statement showing the No. of the
days the petitioner worked.

Ex. M5 : Xerox copy of service sheet of
WW1.

Ex. M6 : Charge Sheet dt. 17-7-91 issued to
WW1.

Ex. M7 : Punishment order dt. 27-5-95 on
WW1.

Ex. M8 : Petty cash vouchers (originals) sig-
ned by fictitious persons like V. Som-
aiah etc.

नई दिल्ली, 27 मई, 1998

का.आ. 1241.—औद्योगिक अधिनियम, 1947
(1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय
सरकार स्टेट बैंक आफ इंडिया मेरठ के प्रबंधन के संबद्ध
नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट
औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण,
कानपुर के पंच-पट को प्रकाशित करती है जो केन्द्रीय
सरकार को 26-5-98 को प्राप्त हुआ था।

[संख्या एल-12012/175/95 आई आर (बी-1)]

पी० जे० माईकल, डेस्क अधिकारी

New Delhi, the 27th May, 1998

S.O. 1241.—In pursuance of Section 17 of the
Industrial Disputes Act, 1947 (14 of 1947), the
Central Government hereby publishes the Award
of the Central Government Industrial Tribunal,
Kanpur as shown in the Annexure, in the indus-
trial dispute between the employers in relation to
the management of State Bank of India, Meerut
and their workman, which was received by the
Central Government on the 26-5-98.

[No. L-12012/175/95-IR (B. I)]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SRI B.K. SRIVASTAVA, PRESIDING
OFFICER, CENTRAL GOVT. INDUSTRIAL
TRIBUNAL CUM LABOUR COURT,
PANDU NAGAR, KANPUR.

Industrial Dispute No. 125 of 1996

In the matter of dispute between :

Sri Madan Lal C/o Sri V. K. Gupta,
General Secretary U.P. Bank
Employees Congress,
2/363 Namneir Agra.

AND

Assistant General Manager,
State Bank of India, Region II,
Zonal Office, Garh Road,
Meerut.

APPEARANCE :

Sri V. K. Gupta, General Secy. for the
Union/Workman.

Sri S. N. Sharma, for the State Bank of
India, Manage.

AWARD

1. Central Govt., Ministry of Labour vide notification No. L-12012/175/95 I.R.B.I. dated 2-12-1996, has referred the following dispute for adjudication to this Tribunal for adjudication :—

Whether the action of the management of S.B.I. Meerut in dismissing from services Sri Madan Lal Messenger posted at S.B.I. Jhanjhar, Bulandshahar, vide order dt. 14-4-1993, is legal and justified ? If not, to what relief is the workman entitled ?

2. The concerned workman Madan Lal was appointed as messenger by the opposite party State Bank of India at Jhanjhar Branch in district Bulandshar, in 1982. In 1989 an anonymous complaint was received that the concerned workman has submitted a false certificate regarding his educational qualification. The matter was not investigated by the opposite party bank as prima facie case was proved. The concerned workman was placed under suspension and a chargesheet dated 7-11-90 was issued which runs as under :—

That you knowingly made a false statement in your application for appointment in the bank regarding your educational qualification.

3. The concerned workman denied the charge. Enquiry officer Narendra Singh by name was appointed enquiry officer, he submitted his report dated 30-12-91. Agreeing with this report the

disciplinary authority has ordered for dismissal of the concerned workman by order dated 14-4-93 by way of punishment. Feeling aggrieved the concerned workman had raised the instant industrial dispute.

4. On the pleadings of the parties a preliminary issue regarding fairness and propriety of domestic enquiry was framed. This tribunal vide finding dated 24-11-97 held that enquiry was fairly and properly held, hence case has been taken up for assessing the quantum of punishment.

5. The case of the concerned workman is that he has actually cleared the class VIII and that he had not given false educational certificate. In any case he ought not to have been awarded the punishment of economic death sentence.

6. On the other hand the authorised representative of the bank has vehemently argued that the minimum educational qualification for the post of messenger is 8th class pass. As the concerned workman was not 8th Class Pass and had secured employment by furnishing false certificate nothing short of dismissal will be appropriate punishment. In support of this contention he has referred to the case of M/s Ciba Geigy Versus Kerkaran and others 1997 Lab. I.C. 451. The authorised representative of the bank has referred to me reference book of Staff Matters Vol. II Chapter V page 39 which shows that the minimum education qualification for messenger is 8 class pass. The authorised representative for the concerned workman has carried me through the finding of this tribunal on preliminary issue. According to the bank the concerned workman had filed certificate from J.P. Inter College, Bulandshahar. During the course of enquiry the concerned workman had filed certificate to show that he had passed 8th Class from Uchchattar Madhyamik Vidyalaya Ahmad Nagar Bulandshahar. In the finding on preliminary issue it has been observed that although the certificate was wrongly filed, the concerned workman had been able to prove that he had pass VIII Class from Uchchattar Madhyamik Vidyalaya Ahmad Nagar, Bulandshahar. In views of this finding it cannot be said that the appointment of the concerned workman from the very beginning was bad. As he had cleared class VIII from Uchchattar Madhyamik Vidyalaya Bulandshahar. Hence on this score awarding of extreme Penalty could not be justified. However, my finding is already on record on preliminary issue that the concerned workman had filed false educational certificate.

7. It has been submitted by the authorised representative for the concerned workman that the charge itself is vague inasmuch as it was not stipulated in the charge that minimum qualification for appointment as messenger is 8th Class pass and the con-

cerned workman had not passed it and that he had furnished a false certificate in this regard. It is submitted that if these details would have been given chargesheet could have been said to be in order. It may be true that this chargesheet is vague but it cannot be considered at this stage specially when it was not pleaded in the claim statement. Still I would like to observe that because of vagueness in the chargesheet precise finding could not be recorded by the enquiry officer as well. Any way as the charge which stands proved that the concerned workman had given a false statement in the form regarding his educational qualification. It is to be borne in mind that the concerned workman had already worked for more than 10 years in the bank before his dismissal. The authorised representative for the concerned workman has submitted that he has a family to support, they will suffer great hardship, hence taking into consideration this aspect and also because the prejudice caused to the concerned workman because of vague charge a lenient view should be taken and extreme penalty should not be awarded. I am inclined to accept specially because on the premises that it has been found that the concerned workman actually did possess the required qualification at the time of his appointment.

8. Thus in view of the above discussion I am of the view that the economic death sentence by way of dismissal is not commensurate with the misconduct. The concerned workman also does not carry the job of confidence, hence denial of wages from the date of dismissal to the date of reference will be adequate punishment.

9. Accordingly my award is that the dismissal of the concerned workman from bank's service is add and he will be entitled for reinstatement with back wages from the date of reference.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 27 मई, 1998

का०ग्रा० 1242.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया, वाराणसी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 26-5-98 को प्राप्त हुआ था।

[संख्या एल-12012/240/95-आई आर (बी-1)]

पी० जे० माईकल, डैस्क अधिकारी

New Delhi, the 27th May, 1998

S.O. 1242.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to

the management of State Bank of India, Varanasi and their workman, which was received by the Central Government on 26-5-1998

[No. L-12012/240/95-IR (B-I)]

P. J. MICHAEL, Desk Officer.

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 40 of 1997

In the matter of dispute :

BETWEEN

Vinod Kumar Srivastava

S/o S. M. Lal Srivastava

C/o Daya Shankar Verma 1/C-2 Tularambagh
Allahabad.

AND

Assistant General Manager
State Bank of India
Region-II Varanasi.

AWARD

1. Central Government, Ministry of Labour, vide Notification No. L-12012/240/95-I.R. (DU) dated 7-7-97, has referred the following dispute for adjudication to this Tribunal—

Whether the action of the management of State Bank of India Region II Zonal Office Varanasi in dismissing Sri Vinod Kumar Srivastava clerk at their Bijpur Branch w.e.f. 18-1-94 is justified. If not what relief the workman is entitled to?

2. There is no dispute that the concerned workman Vinod Kumar Srivastava was working as a clerk at Bijpur Branch District Sonbhadra of the opposite party State Bank of India. He was issued a chargesheet dated 20-9-90, the copy of which is being attached as annexure. It comprises of 9 charges. One M. S. Kawat an officer of the bank was appointed as Enquiry Officer. One B. N. Dubey was appointed as Presenting Officer. The concerned workman did not participate in the enquiry. The Enquiry Officer after completing the enquiry submitted its report dated 26-3-93. On the basis of this report after issuing show cause notice, the concerned workman was dismissed from service by order dated 18-1-94. Feeling aggrieved the concerned workman has raised the instant industrial dispute.

3. In the claim statement it was alleged that enquiry was not conducted fairly and properly. Further the copy of enquiry report was not given to the concerned workman before alongwith show cause notice before passing final order of dismissal from service. On the other hand the management maintained that the enquiry was properly and fairly held. Nothing was said about non furnishing of copy of enquiry report alongwith show cause notice. However, when specifically attention was drawn of Sri Mahesh Chandra the authorised representative of the opposite party bank in this regard he conceded that copy of enquiry report was not given alongwith the show cause notice which proceeded the dismissal order. On the pleadings of the parties preliminary issue was framed as under.

Whether the domestic enquiry conducted by the Bank was fair and proper?

4. I have seen the enquiry proceedings as well as enquiry report dated 26-6-96. A perusal of enquiry proceedings would go to reveal that the concerned workman absented himself from the enquiry. The management bank had furnished the extracts of saving bank account and other papers. The Enquiry Officer made certain enquiry by way of explanation from V. N. Dubey the presenting officer. On the basis of these materials the Enquiry Officer has found that charges Nos. 1, 8 and 9 were not proved, charge No. 7 was proved in part, charges 2 to 6 were proved.

5. It has been submitted on behalf of the authorised representative that the finding has been recorded by Enquiry Officer against the concerned workman on no evidence. Simply filing of extract of account book register etc. was not enough. Some one acquainted with these account books ought to have been examined to prove these extracts. Simply explanation of V. N. Dubey, the presenting officer was not enough. These papers were also not admitted by the concerned workman. In its absence the Enquiry Officer has clearly erred in acting upon the extracts of account registers. When the attention of the authorised representative of the bank was drawn to these short coming he could not give any satisfactory reply. I am inclined to agree with the contention of the concerned workman that in the absence of oral evidence proving the documents filed by the bank the Enquiry Officer ought not to have relied upon them. In this way I come to the conclusion that finding of the Enquiry Officer is based on no evidence as such it is perverse.

6. In normal course, the management would have been given opportunity to prove the misconduct on merits. But the management has not reserved their right to prove the misconduct before this Tribunal. Apart from this dismissal order also suffers from fatal infirmity inasmuch as copy of enquiry report was not given to the concerned workman alongwith show cause notice before passing of dismissal order. In this regard reference may be made to the leading case of Mohd. Ramjan Khan A.I.R. SC 1991 page 471. This judgment was given by the Hon'ble Supreme Court on

20-11-90. It was held in this case that irrespective of the fact whether rules required or not copy of enquiry report has to be sent to the delinquent alongwith show cause notice before awarding punishment. As this judgement had been made operative prospectively. In other words dismissal order which suffers from this infirmity before 20-11-90 is not to be invalidated on this ground. On the other hand the dismissal order which suffered from this non compliance were passed subsequent to 20-11-91 i.e. out of date, would stand vitiated. Admittedly in this case, the copy of enquiry report was not given alongwith the show cause notice, hence the dismissal order on this ground also is bad in law.

7. Thus even if the enquiry would have been held to be fair and proper the dismissal order would have been set aside being in breach of above mentioned case law. It is in these circumstances also that fresh opportunity to the management has not been given to prove the charges on merits.

8. In the end my award is that as the termination order has been passed on the basis of enquiry report bearing no evidence as the copy of report has not been supplied to the concerned workman alongwith show cause notice before dismissal order, the dismissal of the concerned workman by the opposite party bank is not justified. Hence my award is that the concerned workman will be entitled for reinstatement with back wages.

B. K. SRIVASTAVA, Presiding Officer

PRIVATE & CONFIDENTIAL

State Bank of India
Zonal Office, Region-II,
Post Bag No. 3
Cantonment,
Varanasi-221002
No. VRN : ZO : R-II:31

C/o

Shri Vinod Kumar Srivastava
(Under Suspension),
State Bank of India,
Dhundhi Katra,
Distt : Mirzapur
Date 16th April, 1990

DHUNDHI KATRA BRANCH.

The following serious lapses were observed on your part while you were posted at Dhundhi Katra branch :—

- (i) You had deliberately persuaded Branch Manager, Dhundhi Katra to sanction a Medium Term Loan of Rs. 99,500 for purchase of a Mahindra Jeep to be run as Taxi on 9-5-89 to Shri Arun Kumar a man of doubtful integrity and your real younger brother knowing that Shri Arun Kumar had taken a loan of Rs. 17,000 under SEEUY scheme from Vindhyachal branch on 15-2-1984 and a suit for recovery of Rs. 21,013 was filed against him in court of law on 10-10-86. The SEEUY account at Vindhyachal branch was closed on 17-4-89 with a view to completing the formalities for availing the above loan for purchase of taxi from Dhundhi Katra branch. Shri Kumar who is looking after his medical store at Vijaypur in the name of M/s. Kumar Medical Stores, is not driving the vehicle himself. The Taxi business is actually being looked after by you.
- (ii) A Current Account was opened on 2-1-1989 in the name of M/s. Kumar Medical Stores whose sole proprietor is Shri Arun Kumar, your younger brother. The account was operated by you. Your requested for sanction of frequent Overdrafts in the account immediately after the account was opened. The Proprietor of the firm showed his unawareness when asked as to why the Overdrafts were availed by him. Payment of Cheques drawn on the above account were frequently taken by you. For example :

Cheque No.	Date of Cheque	Amount	Date of payment
1	2	3	4
		Rs.	
243813	27-3-89	1,000	28-3-89
243808	2-3-89	2,500	2-3-89
243806	18-2-89	2,000	18-2-89

1	2	3	4
558409	8-2-89	12,000	8-2-89
243804	1-2-89	3,000	1-2-89
243802	24-1-89	1,700	24-1-89
243803	30-1-89	1,500	30-1-89
243817	11-4-89	24,000	11-4-89
243801	17-1-89	2,500	17-1-89
243815	4-4-89	21,000	4-4-89
243816	6-4-89	3,000	6-4-89
243810	7-3-89	3,500	7-3-89
243805	Nil	2,500	6-2-89

Two contingent cheques bearing Number 558409 and 558416 had been issued to you by the Branch Manager, on behalf of M/s. Kumar Medical Stores on 8-2-1989 and 20-4-89 respectively.

- (iii) Posting of the following cheques in the account of M/s. Kumar Medical Stores was done by you at a later date without perusing the actual cheques and consequently wrong cheques number was posted in the ledger, presuming the Cheque No. instead of perusing the the actual cheques number.

Number of Cheques which had actually been paid	Number of Cheques noted in the Ledger Account	Date of Payment	Amount of Cheques
1	2	3	4
			Rs.
558409	007	8-2-89	12,000
243006	008	18-2-89	2,000
243007	009	25-2-89	25,000
558416	819	20-4-89	15,000

- (iv) Further, heavy amount transactions connected with the Cash Credit borrowers of the Branch had been routed through this account as detailed hereunder. It shows that you, in connivance with the then Branch Manager, Shri V.B. Srivastava were hving business connection with the borrowers of the branch.

Date of transaction	Amount	Remarks
	Rs.	
3-3-89	2.00 Lacs (Credit)	Cheque for Rs. 2.00 Lacs debited to the C/C A/c. of M/s. Munni Lal Chandra Pal & Credited its proceeds to M/s. Kumar Medical Stores.
13-3-89	2.00 Lacs (Debit)	M/s. Kumar Medical Stores paid Rs. 2.00 Lacs vide Cheque No. 243809 dated 11-3-89 and proceeds of this cheque credited in the C/C. A/c. of M/s. Munni Lal Chandra Pal.
29-3-89	59,000 (Credit)	Cash Credit A/c. of M/s. Hayat Oriental Exports debited and amount credited to M/s. Kumar Medical Stores.
21-4-89	1,65,000 (Credit) (Although)*	Cash Credit Accounts of M/s. Mahadev Prasad and M/s. Chandan Carpets were debited for Rs. 1.00 Lac and Rs. 65,000 respectively and Kumar Medical Stores A/c. Credited.

*two credit vouchers for Rs. 1.00 lac and Rs. 65,000 have been passed, only 1 entry for Rs. 1,65,000 had been shown posted in the Current A/c.

- (v) The current account of M/s. Kumar Medical Stores has virtually been operated by you, as per your convenience and desire as is shown by the undermentioned cheques which were written by you :—

Cheque No.	Date	Amount Rs.
243808	2-3-89	2,500
243816	6-4-89	3,000
243801	17-1-89	2,500
243815	4-4-89	21,000
243817	11-4-89	24,000
243805	No date	2,500
558416	20-4-89	15,000
243803	30-1-89	1,500
243807	25-2-89	25,000
243802	24-1-89	1,700

- (vi) The figures of Current Account debit balances were never written correctly by you in the weekly abstracts of the branch e.g. as on 25-8-89 the actual total debit balances in the current account were of Rs. 6,54,977-02 whereas in the weekly abstract the figures had been shown as Rs. 1,27,310-91 suppressing the figures of aggregate advances by Rs. 5,27,666-11.

- (vii) Further, the undernoted lapses were committed by you during the period you officiated at the branch as Officer J.M.G.S.-I.

- (a) Savings Bank Progressive Balance Book was either not written for some dates or contained several irregularities. Day Books were either not checked by you or checked incorrectly with fraudulent intentions. Payment scroll was not properly written by you. Further, a number of withdrawals/debit vouchers though taken into account in the Cash Book and General Ledger and sometimes in Day book also; were not posted in the respective Ledger Accounts. In some cases while the progressive balance book contains a debit entry but no relative debit entry was posted in any of the a/c. of the concerned ledger, e.g. Savings Bank Progressive balance book (Ledger No. 14) showed a debit entry of Rs. 1,800 in the date of 31-5-88 but in ledger accounts no such entry was posted. Similarly, in Savings Bank Progressive Book (Ledger No. 16) a credit entry of Rs. 1,800 was posted by you on 23-7-88 but no such entry has been found posted in the concerned ledger account.
- (b) You mis-appropriated Rs. 4,851-10 by deliberately inflating the amount of credit voucher for Rs. 10,789/10 passed by you on 8-10-1987 on account of application of interest on the accounts in ledger No. 17 but the actual credit afforded in the account was Rs. 5,938 only.
- (c) Similarly, the undernoted amounts withdrawn by you on the dates mentioned there against though appearing in Day Book were not posted in your Accounts but the Day Books of these dates were duly checked by you.

Date	Amount	Account No. & Name
1	2	3
16-1-88	200	523 of Sri Vinod Kr. Srivastava (Staff)
9-2-88	1,300	
27-2-88	2,000	
17-9-87	300	1263 of Anurag & V.K. Srivastava (Staff)
11-9-87	200	
8-10-87	1,000	
10-10-87	1,200	
13-10-87	1,200	
19-10-87	30	
19-10-87	100	
19-11-87	300	
23-11-87	500	
5-12-87	700	

1	2
10-12-87	1,300
11-1-88	1,000
21-1-88	1,800
3-2-88	1,200
15-2-88	1,000
22-3-88	1,300
28-3-88	500
18-12-86	50

The vouchers of these amounts were fraudulently taken out by you.

Please submit your explanation on the above points within 15 days from the date of receipt of this letter failing which it shall be presumed that you have nothing to state in the matter and we shall proceed further accordingly. In case you wish to peruse some documents, please submit a list thereof to us alongwith your explanation to enable us to arrange accordingly.

Please acknowledge receipt of this letter on the duplicate copy.

Yours faithfully,

Sd/-

REGIONAL MANAGER

State Bank of India
Zonal Office, R-II
Post Bag No. 3
Cantonment,
Varanasi-221002

Shri V.K. Srivastava,
Clerk (under suspension),
C/o. State Bank of India,
Bijpur.
(Distt. : Sonbhadra)
Date 20 Sep. 1991

No. ZO/VRN/RII/FC/116

CHARGE-SHEET

It has been decided to initiate disciplinary action against you on the undernoted charges committed by you while posted as clerk at Dhundhikatra (Mirzapur) branch :—

CHARGE NO. 1

The undernoted acts of gross misconduct have been committed by you in operation of S.B. Account No. 1263 of Shri Anurag (your brother) :—

(i) The request of Shri Anurag for opening of Savings Bank Account vide his Account Opening Form dated 16-12-86 introduced by you was for opening of account in his single name but you unauthorisedly added your name in the ledger sheet as E. on S.A. Refund Order No. 477945 drawn on Central Bank of India and cash deposit of Rs. 20 (Rupees twenty only) were accepted on 09-12-86 and 15-12-86 respectively even though the account had not been formally opened in the books of the branch.

(ii) You made the following superfluous credit entries in the above mentioned Savings Bank Account :—

Date of making credit entry	Amount in Rs.
1	2
1. 18-05-88	1,300
2. 28-05-88	2,100
3. 23-08-88	3,000
4. 17-09-88	1,000
5. 20-09-88	950
6. 26-12-88	3,000
7. 06-01-89	500

- (iii) You have unauthorisedly signed as drawer and received payment of the undernoted withdrawals from your brother's above account without actually posting these withdrawals in the ledger-sheet. Initials of posting were also falsely made by you (except in the withdrawal at sl. no. 2) :—

Date of withdrawal	Amount in Rs.
1. 07-09-87	300
2. 11-09-87	200
3. 17/19-10-87	100
4. 19-10-87	30
5. 19-11-87	300
6. 23-11-87	500
7. 05-12-87	700
8. 03-02-88	1,200
9. 09-02-88	1,300
10. 15-02-88	1,000
11. 22-03-88	1,300
12. 26-03-88	2,300
(paid on 26-4-88)	
13. 28-03-88	500
14. 05-04-88	1,000
15. 01-07-88	1,300
16. 03-09-88	2,300
17. 23-09-88	1,400
18. 12-10-88	1,950
19. 21-10-88	1,000
20. 24-11-88	1,500
21. 26-11-88	550

- (iv) Though the undernoted withdrawals were signed by Shri Anurag as drawer, you received payment of these withdrawals. The withdrawals were not posted in the ledger-sheet but were falsely initialled by you in token of posting thereof :

Date of withdrawal	Amount in Rs.
1	?
1. 08-10-87	1,000
2. 10-10-87	1,200
3. 13-10-87	1,200
4. 10-12-87	1,300
5. 11-01-88	1,000
6. 21-01-88	1,800
7. 19-04-88	1,700
8. 14-06-88	2,000
(paid on 15-6-88)	
9. 12-07-88	1,300
10. 15-07-88	300
11. 19-12-88	3,800

- (v) Though you wrote/checked the Savings Bank Day Book of the dates mentioned at serial no. (iii) & (iv) above (except on 08-10-87 at iv above), even then neither you posted the withdrawals nor pointed out the mistakes for rectification.

- (vi) The withdrawals dated 19-11-87, 11-01-88, 21-01-88, 26-03-88 (payment obtained on 26-04-88), 19-04-88, 19-06-88 (payment obtained on 15-06-88), 12-07-88, 17-07-88, 21-10-88 and 19-12-88 mentioned against acts of misconduct at serial no. (iii) & (iv) above were passed by yourself.

CHARGE NO. 2

The following acts of gross misconduct have been committed by you in operation of your own S.B. Account no. 1223:—

- (i) The following amounts have been withdrawn by you without actually posting withdrawals in the ledger-sheet but making false initials of posting thereon:—

Entry dated	Amount in Rs.
1. 16-01-88	200
2. 02-05-88	2,000
3. 31-08-88	300
4. 29-09-88	370
5. 22-10-88	600
6. 07-11-88	580
7. 16-12-88	200
8. 27-02-88	2,000

- (ii) Withdrawal for Rs. 2,000/- dated 2-5-88 and Rs. 600/- dated 22-10-88 were passed by yourself.
- (iii) Day Book dated 16-1-88, 27-2-88, 2-5-88, 29-9-88, 22-10-88, 16-12-88 were written/checked by you but neither posted the vouchers nor pointed out the mistake for rectification.

CHARGE NO. 3

The following acts of gross misconduct have been committed by you in operation of Joint Savings Bank Account No. 1308 standing in the name of Smt. Shyama Devi (your mother), Shri Sheo Murti Lal Srivastava (your father) and yourself —

- (i) You made the undernoted superfluous credit entries in the above mentioned joint Savings Bank Account:

Entry dated	Amount in Rs.
1. 30-08-88	2,000
2. 29-09-86	570
3. 03-01-89	3,000

- (ii) The following withdrawals have been made by you from the above joint account without actually posting the withdrawal/debit voucher in the ledger-sheet but making false initials of posting thereon:

Entry dated	Amount in Rs.
1. 30-12-87	1,600
2. 13-08-88	400
3. 17-08-88	3,000
4. 30-09-88	2,350
5. 17-12-88	400

- (iii) Withdrawal/debit vouchers at Sl. No. 2, 3 & 5 noted at point-No. (ii) above were passed by yourself.
- (iv) Day Books of all the above dates were also checked by you but you neither posted the vouchers nor pointed out the mistakes for rectifications.

CHARGE NO. 4

The following acts of gross misconduct have been committed by you in conduct of Savings Bank Account No. 1487 of Shri Nand Laj Agrahari :

- (i) You opened the above account on 5-10-88 without obtaining any introduction, authentication of account-holder's specimen signatures by any official and without obtaining the permission of the Branch Manager to open the account.

- (ii) You made the following withdrawals from the above Savings Bank Account of Shri Nand Lal Agrahari by making his forged signatures on the withdrawal forms:—

	(Rs.)
1. 28-11-88	2,500
2. 05-12-88	1,000

- (iii) The tokens on these withdrawals were issued by you.
 (iv) Though the above withdrawals were not posted actually in the ledger-sheet, you made your false initials of postings thereon
 (v) The withdrawal dated 28-11-88 for Rs. 2,500/- was passed by yourself.

CHARGE NO. 5

You deliberately inflated the S.B. Interest Account debit voucher and consolidated credit voucher for credit to Sundry parties in ledger No. 18 for application of interest in the following manner with ultering motives:

Voucher dated	Ledger No.	
08-10-87	17	The total of consolidated amount on interest applied companies of Rs. 8,975 whereas the voucher have been prepared for Rs. 10,780.10. Thus on excess credit of Rs. 1805.10 been altered to S.B. Head in General Ledger to cover up your misdeeds.
31-10-87	18	The total of consolidated amount of interest applied comes to Rs. 38,472.90 whereas the vouchers have been prepared for Rs. 60,472.00 Thus an excess credit of Rs. 22,000/- has been afforded to S.B. Head in General ledger to cover up your misdeeds.

CHARGE NO. 6

You persuaded the then Branch Manager, Dhundhikatra Branch and got sanctioned a Medium Term Loan for Rs. 99,500/- on 9-5-89 for purchase of a Mahendra Jeep to your brother Shri Arun Kumar Srivastava knowing fully well that he was ineligible for the above loan on the grounds detailed in point No. (i) & (iv) and you committed various irregularities while filling the application form and documents as detailed under point No. (V) of this paragraph:—

- (i) He was a man of doubtful integrity as he defaulted in payment of bank's dues availed under SFEUY Scheme from our Vindhayachal branch on 17-02-84, consequently a suit for recovery of Rs. 21,013/- was filed against him in the Civil Court at Mirzapur on 10-10-86. In order to avail of the above MTL for purchase of jeep he repaid the outstanding amount at Vindhayachal branch on 17-04-89. He was already carrying on the business of medical stores in the firm name of Kumar Medical Stores at Vijayeeepur, District Mirzapur and as such was ineligible for the advance.
- (ii) His fictitious address was furnished as Wasliganj, Mirzapur whereas he was residing at village-Vijayeeepur, District : Mirzapur and thus the advance was not in the area of operation of the Dhundhi Katra Branch.
- (iii) Since Shri Arun Kumar Srivastava was your real brother, the prior permission from the controlling office was essential before sanction of advance as it was in the name of a near relative of the staff member.
- (iv) Advance was in the individual name of the borrower while the margin money was debited from the firm's account of M/s. Kumar Medical Stores.
- (v) Application for the advance and relative documents have been completed by you incorporating irregular/incomplete information in the following documents obtained for the above advance:—

Documents	Irregularity
D.P. Note	COS 228 was obtained instead of COS 220.
D.P. Note Delivery letter	Guarantor Signatures not obtained.
Arrangement letter	Guarantor's signatures not obtained
T.O. Forms	Signatures of borrower not obtained.
Authority letter	No information filled except the signature of the borrower.

Guarantor's agreement	(i) The signatures of the borrower on the last page have been obtained in the column meant for witness. (ii) Stamp papers worth Rs. 10/- have been kept blank duly signed by the guarantor.
Agreement for MTL	Signatures of the <i>guarantor</i> should not have been obtained on it. Non Judicial Stamp papers worth Rs. 75/- have been kept blank duly signed by the borrower and the guarantor.
Debit voucher for Rs. 99,500/-.	There is no endorsement on the back of the voucher.
Application form	Signatures of the borrower have not been obtained on each page of the application form. His fictitious address as resident of Wasliganj, Mirzapur has been given whereas he was <i>residing</i> at Vill. Vijayeeepur, Distt. Mirzapur. The columns meant for particulars of guarantor's place and date, collateral security and general left blank.

CHARGE NO. 7

The Current Account of M/s. Kumar Medical Stores opened on 02-01-89 whose sole proprietor is Shri Arun Kumar Srivastava (your brother) has virtually been operated by you. The following acts of misconduct have been found on your part in operation of this account —

- (i) You wrote the cheques mentioned in paragraph (a) and received payment of the cheques mentioned under paragraph (b) below of the above firm :—

- (b) Cheques written by you :

Cheque No.	Dated	Amount In Rs.
243801	17-01-89	2,500/-
243802	24-01-89	1,700/-
243803	30-01-89	1,500/-
243805	Undated	2,500/-
	(Paid on 6-2-89)	
243807	25-02-89	25,000/-
243808	02-03-89	2,500/-
243815	04-04-89	21,000/-
243816	06-04-89	3,000/-
243817	11-04-89	24,000/-
554816	20-04-89	15,000/-

- (b) Details of cheques payments of which received by you —

Cheque No.	Dated	Amount In Rs.	Date of payment
243801	17-01-89	2,500/-	17-01-89
243802	24-01-89	1,700/-	24-01-89
243803	30-01-89	1,500/-	30-01-89
243804	01-02-89	3,000/-	01-02-89
243805	NIL	2,500/-	06-02-89
558409	08-02-89	12,000/-	08-02-89
243806	18-02-89	2,000/-	18-02-89
243808	02-03-89	2,500/-	02-03-89
243810	07-03-89	3,500/-	07-03-89
243813	27-03-89	1,000/-	28-03-89
243815	04-04-89	21,000/-	04-04-89
243816	06-04-89	3,000/-	06-04-89
243817	11-04-89	24,000/-	11-04-89

- (ii) The undernoted cheques have been posted by you in the above Current Account by creating overdraft without obtaining approval of the Branch Manager for creation of overdraft in the account. The payment of these cheques too has been received by you :—

Cheque No.	Date of payment	Amount
		In Rs.
243802	24-01-89	1,700/-
243804	01-02-89	3,000/-
558409	08-02-89	12,000/-
243808	02-03-89	2,500/-

- (iii) Postings of the undernoted cheques in the above firm's account was done by you recording incorrect cheque nos. :—

Actual No. of cheque	Cheque No. recorded in the ledger	Date of cheque paid	Amount In Rs.
558409	558007	08-02-89	12,000/-
243006	243008	18-02-89	2,000/-
243007	243009	25-02-89	25,000/-
558416	558419	20-04-89	15,000/-

CHARGE NO. 8

On 25-08-89 the figures of Current Account overdraft were Rs. 4,71,801.22 whereas you wrote the figures as Rs. 1,27,310.92 in the weekly abstract with a view to suppressing the figures of aggregate advances.

CHARGE NO. 9

In order to hide your various acts of misconduct you destroyed/removed/cut and defaced the following records of Dhundhikatra branch relating to the charges incorporated above —

Bank's Cash Scroll

A Scroll for the period from 09-06-87 to 10-06-88 removed from the bank's records.

B Scroll containing entries upto 01-01-1989.

C Scroll from 13-07-88 to 27-07-88 (page No. 10 & 11).

Payment Register

Date	Page No.	
28-07-87 to 29-07-87	12 & 13	Removed.
04-08-87 to 05-08-87	18 & 19	Relevant portion of pages cut out.
29-09-87	68	—do—
03-10-87	70	—do—
04-11-87	97	—do—
11-11-87 to 12-11-87	102 & 103	Flat-torn.
03-12-87	124	Relevant portion of pages cut out.
08-12-87 to 15-12-87	128 to 137	Removed.
19-12-87	141	Removed.
24-12-87	145	Cutting of figures by pen making ineligible to read.
29-12-87 to 30-12-87	148 & 149	Removed.
13-01-88	164	Relevant portion of pages cut out.
20-01-88	170	Cutting of figures by pen making ineligible to read.
28-01-88	174	—do—
30-01-88	176	—do—
12-04-88 & 13-04-88	240 to 241	Half page removed.
21-04-88 & 22-04-88	248 & 249	Torn.
06-05-88 to 08-05-88	264 & 265	Removed.
29-05-88 to 02-06-88	286 to 289	Removed.
11-06-88	300	Half-torn.
11-07-88	24 & 25	Removed.
22-07-88 & 23-07-88	36 & 37	Removed.

Account Opening Form-cum-Specimen Signature Sheet

Account No. 1223 in your name.

Account No. 1308 in the joint name of Smt. Shyama Devi, Shri Sheo Murti Lal Srivastava and yourself.

The above actions on your part are highly prejudicial to the bank's interest in terms of paragraph 521(4)(J) of the Sastry Award as retained by Sastry Tribunal in its Award and cast serious aspersions on your bonafides and integrity. You are, therefore, called upon to submit your reply, if any, to the above charges within 7 days of its receipt, failing which it will be presumed that you have nothing to submit and the bank will take such action as it deems fit, under the rules governing your service.

Sd/-

Regional Manager (II),
Disciplinary Authority.

नई दिल्ली, 27 मई, 1998

का०प्रा० 1243—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मिर्जा चौकी स्टोन क्वारी जिला साहिबगंज के प्रबंध-तंत्र के संबंध नियोजकों और उनके कर्मचारों के बीच, भ्रनबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, सं० 2, धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-5-98 को प्राप्त हुआ था।

[संख्या एल-29011/11/90-आई०आर० (विविध)]

बी० एम० डेविड, डेस्क अधिकारी

New Delhi, the 27th May, 1998

S.O. 1243.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the 27 managements of Stone Quarries of Mirjachouki, Distt. Sahibganj and their workmen, which was received by the Central Government on 27-5-1998.

[No. L-29011/11/90-IR (Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT
DHANBAD**

PRESENT :

Shri B. B. Chatterjee, Presiding Officer

In the matter of an Industrial Dispute under
Section 10(1)(d) of the I.D. Act, 1947.

Reference No. 13 of 1990

PARTIES :

Employers in relation to the management of
Stone Quarries of Mirja Chouki, Distt.
Sahibganj, Bihar and their workmen.

APPEARANCES :

On behalf of the workmen—None

On behalf of the employers—None

STATE : Bihar

INDUSTRY Stone Mines

Dated, Dhanbad, the 18th May, 1998

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-29011/11/90-IR (Misc.), dated the 18th May, 1990.

SCHEDULE

"Whether the demand of Khadan Mazdoor Sangh on the Owners of Stone Quarries of Mirza Chouki, Distt. Sahibganj for payment of 20 per cent Bonus for the accounting year 1988-89 to all the workmen employed in their Stone Quarries is justified? If so, to what relief the workmen concerned are entitled?"

2. Soon after the receipt of the Order of reference notices were duly served upon the parties. But none of the parties turned up before the Tribunal nor took any steps. Then again notices were issued to them but inspite of the issuance of notices to them they neither appeared nor took any steps. It therefore needs me to an inference that presently there is no dispute existing between the parties involved in this reference. In the circumstances, I have no other alternative but to pass a 'No dispute' Award in this reference.

B. B. CHATTERJEE, Presiding Officer

नई दिल्ली, 27 मई, 1998

का०प्रा० 1246—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बिहार मानपुर स्टोन क्वारी के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मचारों के बीच, भ्रनबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, सं० 2, धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-5-98 को प्राप्त हुआ था।

[संख्या एल-29011/18/90-आई०आर० (विविध)]

बी० एम० डेविड, डेस्क अधिकारी

New Delhi, the 27th May, 1998

S.O. 1244.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the

Central Government hereby publishes the Award of the Central Government Industrial Tribunal No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Bihar Manpur Stone Workers and their workman, which was received by the Central Government on 27-5-98.

[No. L-29011/18/90-IR (Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri B. B. Chatterjee, Presiding Officer
In the matter of an Industrial Dispute under
Section 10(1)(d) of the I.D. Act, 1947

Reference No. 18 of 1990

PARTIES :

Employers in relation to the management of
M/s. Bihar Manpur Stone Works, Gaya,
P.O. Buniadganj and their workmen.

APPEARANCES :

On behalf of the workmen—None
On behalf of the employers—None.

STATE : Bihar INDUSTRY : Stone Mines
Dated, Dhanbad, the 20th May, 1998

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-29011/18/90-I.R. (Misc.), dated the 5th July, 1990.

SCHEDULE

“क्या बिहार राज्य पत्थर तोड़ मजदूर यूनियन, गया जिला कमेटी, पुरानी जेलखाना, गया द्वारा मैसर्स बिहार मानपुर स्टोन क्वाररीज अबजिल्सा मानपुर पो. बुनियाद गंज, गया में कार्यरत कर्मकारों के संबंध में की गई निम्नलिखित मांगें उचित है। यदि हाँ तो कर्मकार किस अनुतोष के अधिकारी है:—

मांग सं 1 :—हैंड ड्रिलर, ड्रिलर, मिट्टी मेन, कम्प्रेसर मिस्त्री, सहायक मिस्त्री, क्लेशर खलासी, अलग एवं ट्रक लोडर की दैनिक मजदूरी में वृद्धि किया जाना।

मांग सं 2—कलल तोड़ने वाले मजदूरों की सया पांच रूपया प्रति बक्सा, 10 फीट के नाप से तोड़ाई किया जाना।”

2. Soon after the receipt of the order of reference notices were duly served upon the parties. But neither of the parties turned up nor took any steps. Then again notices were issued to the parties. But inspite of the issuance of notices to them they neither appeared before this Tribunal nor took any steps. It therefore leads me to an inference that presently there is no dispute existing between the parties. In the circumstances, I have no other alternative but to pass a 'No dispute' Award in this reference.

B. B. CHATTERJEE, Presiding Officer

नई दिल्ली, 27 मई, 1998

कां०आ० 1245.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अराडीह स्टोन क्वाररी के प्रबंधन के संबंध नियो-जकों और उनके कर्मकारों के बीच अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, सं० 2, धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-5-98 को प्राप्त हुआ था।

[सं० एल-29011/19/90-आई० आर० (विधि)]

बी० एम० डेविड, डेस्क अधिकारी

New Delhi, the 27th May, 1998

S.O. 1245.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Aradih Stone Quarry and their workmen, which was received by the Central Government on 27-5-98.

[No. L-29011/19/90-IR (Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri B. B. Chatterjee, Presiding Officer
In the matter of an Industrial Dispute under
Section 10(1)(d) of the I.D. Act, 1947

Reference No. 16 of 1990

PARTIES :

Employers in relation to the management of
Visharad Stone Works, Aradih Stone
Quarry and their workmen.

APPEARANCES :

On behalf of the workmen—None

On behalf of the employers—None

STATE : Bihar INDUSTRY : Stone Mines

Dated, Dhanbad, the 19th May, 1998

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-29011/19/90-I.R.(Misc.), dated the July, 1990.

SCHEDULE

“क्या बिहार राज्य पत्थर तोड़ मजदूर यूनियन गया जिला कामीटि पुरानी जेलखाना, गया बिहार द्वारा मैसर्स विशारद स्टोन वर्क्स ब्राडीह स्टोन क्वारी बैरागी, गया बिहार में कार्यरत कर्मकारों के संबंध में की गई निम्नलिखित मांगें न्यायोचित है? यदि हां तो कर्मकार किस अनुलोप के अधिकारी है?

मांग नं० 1, नौकरी से हटाये गये श्री राजेन्द्र यादव झाड़वर, श्री मारिका यादव झाड़वर, श्री सुरेश यादव झाड़वर तथा श्री कामता खलासी को नौकरी में बहाल करना।

मांग नं० 2 हैड डीलर, डीलर, मिट्टी मैन, कम्प्रेसर मिस्त्री, चौकीदार, ट्रक ड्राइवर, ट्रक खलासी एवं मुंशी की दैनिक मजदूरी में वृद्धि करना।”

2. Soon after the receipt of the order of reference notices were duly served upon the parties. But neither of the parties turned up nor took any steps. Then again notices were issued to them but in spite of the issuance of notices to them they did not turn up before this Tribunal. It therefore leads me to an inference that presently there is no dispute existing between the employers and the workmen involved in this reference. In the circumstances, I have no other alternative but to pass a 'No dispute' Award in this reference.

B. B. CHATTERJEE, Presiding Officer

नई दिल्ली, 22 मई, 1998

का०आ० 1246.—उत्प्रवास अधिनियम, 1983 (1983 का 31) की धारा 3, उपधारा (1) द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार, श्री एस० पी० सिंह सेवतिया को दिनांक 2-4-98 से उत्प्रवासी संरक्षक हैदराबाद के रूप में नियुक्त करती है।

[फा० सं० एस० 11011/1/98-उत्प्रवास]

बी०डी० नागर, अवर सचिव

New Delhi, the 22nd May, 1998

S.O. 1246.—In exercise of the powers conferred by Section 3, Sub-Section (i) of the Emigration Act, 1983 (31 of 1983), the Central Government hereby appoints Shri S. P. Singh Tebtia as Protector of Emigrants, Hyderabad with effect from 2nd April, 1998 (F. N.).

[F. No. S-11011/1/98-Emig.]

V. D. NAGAR, Under Secy.

श्रम मंत्रालय

नई दिल्ली, 28 मई, 1998

का०आ० 1247—केन्द्रीय सरकार ने यह समाधान हो जाने पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (v) के उपखंड (vi) के उपबंधों के अनुसरण में भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्या का०आ० 3183 दिनांक 28 नवम्बर, 1997 द्वारा भारतीय खाद्य निगम को उक्त अधिनियम के प्रयोजनों के लिए 28 नवम्बर, 1997 से छह मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था;

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छह मास की और कालावधि के लिए बढ़ाया जाना अपेक्षित है;

अतः अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (v) के उपखंड (vi) के परन्तुक द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए 28 मई, 1998 से छह मास की और कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[फा० सं० एस० 11017/5/91-आई०आर० (पी० एल०)]

एच०सी० गुप्ता, अवर सचिव

MINISTRY OF LABOUR

New Delhi, the 28th May, 1998

S.O. 1247.—Whereas the Central Government having been satisfied that the public interest so required had, in pursuance of the provisions of sub-clause (vi) of the clause (n) of section 2 of the Industrial Dispute Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour S. O. No. 3183 dated the 28th November, 1997 services in the Food Corporation of India to be a public utility service for the purpose of the said Act, for a period of six months from the 28th November, 1997;

And, whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months;

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares the

said industry to be a public utility service for the purposes of the said Act for a period of six months from the 28th May, 1998.

[F. No. S-11017/5/91-IR(PL)]
H. C. GUPTA, Under Secy.

नई दिल्ली, 29 मई, 1998

का०आ० 1248—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दिल्ली मिल्क स्कीम के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के रचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-5-98 को प्राप्त हुआ था।

[सं० एन-42011/5/84-डी-II (बी)]
के० बी०बी० उण्णी, डेस्क अधिकारी

New Delhi, the 29th May, 1998

S.O. 1248.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Delhi Milk Scheme and their workman, which was received by the Central Government on the 29-5-1998.

[No. L-42011/5/84-D. II(B)]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA : PRESID-
ING OFFICER : CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL : NEW DELHI

I.D. No. 67/84

In the matter of dispute :

BETWEEN

The General Secretary,
Delhi Milk Scheme Employees Union,
H.O. West Patel Nagar,
New Delhi-110008.

Versus

The General Manager,
Delhi Milk Scheme,
West Patel Nagar,
New Delhi.

APPEARANCES :

Shri R. S. Rawat for the workman.
Shri R. M. Tatia for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-42011(5)/84-D.II (B) dated 5th September, 1984 has referred the following industrial dispute to this Tribunal for adjudication :—

“Whether the action of the management of Delhi Milk Scheme in discontinuing the payment of Night Duty Allowance to 15 categories of the employees mentioned in the Annexure, w.e.f. 1-3-83 is justified ? If not, to what relief are the concerned workmen entitled ?”

ANNEXURE

1. A.M.D.O. (DOCKET)
2. Asstt. Security Officer
3. Sr. Welder
4. Turner
5. Vulcaniser
6. Sanitary Inspector
7. Compounder
8. Head Washerman
9. Washerman
10. Dresser
11. Watchmen
12. Head Watchmen
13. Security Supervisor
14. Store Clerk
15. Sweepers.”

2. The brief facts as stated in the statement of claim filed by the Union are that the management was running an Industry round the clock in three shifts of 8 hours duration. In pursuance of its decision to provide some relief/compensation to the employees performing night duty Ministry of Agriculture had conveyed sanction of the President of India for grant of payment of Night Duty Allowance at specified rates w.e.f. 20-10-75. The letter of sanction did not specify the particular categories of the employees eligible for payment of night duty allowance but covered all such regular employees of D.M.S. who were deployed to work in night shift. The Management, however, acted arbitrarily and discriminatory by allowing the payment of Night Duty Allowance to only 7 categories of employees and ignored remaining 19 categories who were also deployed in night shifts. After prolonged discussions and representations the management extended the benefit of Night Duty Allowance to all the left out 19 categories w.e.f. 1-6-80. The allowance was paid for about 3 years. The management again took a unilateral decision and discontinued payment of night duty allowance to 15 categories out of 19 categories w.e.f. 1-3-83 vide order dated 4-4-83. The payment of night duty allowance was stopped to 15 categories of the employees out of those 19 categories. The union

approached the management again for release of the allowance to the remaining 15 categories of the employees also but they refused. Hence this reference after the conciliation proceedings failed.

3. The Management in its written statement admitted the facts as given in the statement of claim. It has, however, been alleged that the management has not arbitrarily stopped the payment to the D.M.S. employees but has done so because the Government has not agreed with their proposal for continuance of the payment of the Night Duty Allowance to these categories. 4th Central Pay Commission had left the issue to the Government to introduce uniform system of weightage for Night Duty Allowance. The payment was thus stopped by the Management on the instructions of the Government of India. The workman in support of their case examined one Krishan Kumar General Secretary WWI and Management on the other hand examined witness Shri Mohan Singh Personnel Officer.

4. I have heard representatives for the parties and have gone through the record.

5. The Management in its written statement as well as in the statement of its witness has admitted the payment of allowance to these 15 categories but has admitted that the payment was stopped due to direction from the Ministry of Agriculture Government of India who had followed the instructions of the Ministry of Finance. Neither the W.S. nor the points submitted in the written arguments disclosed any justification for the stoppage of this payment to these categories of employees. The mere fact that government order was issued it does not by itself justify the non-payment of the allowance to some categories while the payment was allowed to certain other categories. The management of the D.M.S. i.e. Delhi Milk Scheme had not actually contested the issue of payment of Night Duty Allowance to these categories but have only stated that they have stopped the payment due to the order of the Government of India. The said order had not been defended by the management nor have they shown any reason why this order be implemented when it apparently seems to be discrimination amongst the other categories.

6. In view of this situation, I am left with no option but to hold that there is no justification in not allowing the night duty allowance as claimed by these 15 categories for the relevant period. The order of the Government not allowing this night duty allowance was not justified. Parties are left to bear their own costs.

12-5-98.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 29 मई, 1998

कांआ० 1249.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय

सरकार प्रोविडेंट फंड ऑर्गेनाइजेशन के प्रबंधन के संबंध में निोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-5-98 को प्राप्त हुआ था।

[सं० एल-42012/2/92-आईआर (डीयू.)]
के० बी०बी० उष्णी, हेल्थ अधिकारी

New Delhi, the 29th May, 1998

S.O. 1249.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Provident Fund Organisation and their workman, which was received by the Central Government on the 29-5-98.

[No. L-42012/2/92-IR(DU)]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA : PRESIDING OFFICER : CENTRAL GOVT. INDUSTRIAL TRIBUNAL : NEW DELHI

I.D. No. 7/93

In the matter of dispute between :

Shri Sayyad Niyaz Hussain
S/o Shri Izhar Hussain,
C/o Shri Jaigum Haider,
r/o House No. CV 3 Sector 23,
Rajnagar, G. Bad, U.P.

Versus

Regional Provident Fund Board,
through its :—

Regional Provident Fund Commissioner,
U.P. Nidhi Bhawan, Sarvodaya Nagar,
Kanpur.

2. Sub—Regional Provident Fund Commissioner,
U.P.,
IInd Floor Vikas Bhawan,
Civil Lines, Meerut, U.P.

APPEARANCES :

None for the workman.
Shri D. P. Sethi for the Management.

AWARD

The Central Government in the Ministry of Labour vide order No. L-42012/2/92-I.R.(D.U.) dated 7-1-93 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the management of Employees Provident Fund Organisation in terminating the services of Shri Sayyad Niyaz Hussain, s/o Shri Izhar Hussain, Peon/Messenger w.e.f. 1-11-1987 is

legal and justified? If not, what relief the workman concerned is entitled to?"

New Delhi, the 3rd June, 1998

2. In his statement of claim workman alleged that he was worked with the management from 1-4-85 to 12-2-86 and from 1-4-86 to 31-10-87. He was engaged against the permanent nature of the job but was not regularised though he had completed 240 days. His services were terminated w.e.f. 31-10-87 in violation of the mandatory provisions of the Industrial Disputes Act. Hence, this reference.

3. The Management in its written statement denied the allegations in the statement of claim, alleged that the workman was not entitled to regularisation as he was appointed as a casual employee on daily basis. He had not completed 240 days of service nor the management was an Industry and the workman was not entitled to any relief.

4. The management examined Shri S. R. Joshi, Regional Provident Fund Commissioner as its witness MW1 while the workman did not turn up and was ordered to be proceeded against exparte.

5. I have heard the representatives for the management and have gone through the record.

6. The representative for the Management has brought to my notice period for which the workman was employed as a casual worker on daily basis. He has not completed 240 days in a one calendar year. The workman himself has not come in the witness box nor filed any affidavit nor produced any other evidence. He has not even cross-examined the management witness and the testimony of the management witness who was responsible officer has gone unchallenged.

6. On the basis of evidence produced by the management in this case, I am of the opinion that the action of the management in terminating the services of the workman was fully justified and the workman not entitled to any relief in this case. Parties to bear their own costs.

21-05-1998.

GANPATI SHARMA, Presiding Officer.

नई दिल्ली, 3 जून, 1998

कां०आ० 1250.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 11) की धारा 17 के अन्वय में केन्द्रीय सरकार डमगोरिया कोलरी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आसनसोल के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-5-98 को प्राप्त हुआ था।

[सं० एल-22012/17/93-आई आर (सी-II)]

लोचो माओ, डेस्क अधिकारी

S.O. 1250.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Asansol as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Damagoria Colliery and their workman, which was received by the Central Government on 19-5-98.

[No. L-22012/17/98-I.R.(C-II)]

LOWLI MAO, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, ASANSOL

Reference No. 21 of 1993

PARTIES:

Employers in relation to the management of Damagoria Colliery.

AND

Their Workmen

PRESENT:

Shri R. S. Mishra, Presiding Officer.

APPEARANCES:

For the Employers—Shri F. K. Das, Advocate.

For the Workmen—Shri S. K. Singh, Secretary of the Union.

INDUSTRY : Coal. STATE : West Bengal.

Dated, the 1st May, 1998

AWARD

By Order No. L-22012/17/93-IR(C-II) dated 13-5-1993 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:—

"Whether the action of the management of Damagoria Colliery in not providing employment to the dependent of Lt. Jogai Bouri and 18 others (List given below) as per para 9.4.2 and 9.4.3 of NCWA-IV in their respective place is justified? If not, to what relief is the concerned dependants entitled to?"

List of workmen

1. Lt. Jogai Bouri
2. Lt. Tula Mia
3. Lt. Kalo Bouri
4. Lt. Barahabu Bouri
5. Lt. Bhaglu Satnami
6. Lt. Lakhu Singh
7. Lt. Sahadar Gope
8. Sh. Chaman Mahato

9. Sh. Biswanath Rabidas
10. Sh. Nanu Rabidas
11. Sh. Lekho Gope
12. Sh. Kishori Das
13. Sh. Bodi Bouri
14. Sh. Dinanath Gareree
15. Smt. Somari Mahara
16. Smt. Fulia Mahara
17. Smt. ShyamKumari
18. Smt. Sebbi Bouri
19. Smt. Kewrabai Satnami.

2. The union initially pleaded that dependants of the employees as per list are entitled for employment under the provisions of NCWA-IV and the Female Voluntary Retirement Scheme. Subsequently the union pleaded vide their rejoinder dated 9-10-1996 and additional rejoinder dated 15-4-1997 that dependants of three specified female workers are entitled for employment under the Female Voluntary Retirement Scheme and that the cases of others have been settled by the management. Subsequently at the time of hearing and as reflected vide order dated 1-4-97 of the Tribunal, the union confined its demand only in respect of two female workers namely, Somari Mahara and Fulia Mahara vide serial nos. 15 and 16 of the list of employees attached to the reference. The union advanced the case that special Voluntary Retirement Scheme was introduced for female workers, that in pursuance of such Scheme these two female workers applied for voluntary retirement and for employment to their dependant sons and that in spite of approval of their applications by the Head Office of the management, these two specified female workers, namely, Somari Mahara and Fulia Mahara were not given voluntary retirement with the benefit of employment of their sons.

3. The management filed its written statement confining its case to the reference. The reference questioned the action of the management in not providing employment to dependants of the employees as per list in pursuance of Para 9.4.2 and 9.4.3 of the NCWA-IV. The management pleaded that the demands did not conform requirement of Para 9.4.2 and 9.4.3 of the NCWA-IV and so employment to dependants as demanded by the concerned employees could not be provided.

4. Para 9.4.2 of the NCWA-IV provides for employment to dependants of workers who die during service and the provision in Para 9.4.3 is in respect of employment to dependants of workers who become permanently disabled. The NCWA-IV does not contain any provision concerning voluntary retirement of female workers and consequential employments to their dependant sons. Admittedly the Female Voluntary Retirement Scheme was introduced by the management, as a Special Scheme, over and above the aforesaid provisions in NCWA-IV and it had nothing to do with the NCWA-IV.

5. The reference is limited to beneficial employment to dependants in pursuance of the provisions in Para 9.4.2 and 9.4.3 of the NCWA-IV. The reference does not speak about beneficial employment

under special Female Voluntary Retirement Scheme. It is settled law that the Tribunal cannot go beyond the scope of the reference for giving any benefit. The reference does not authorise this Tribunal to examine the question of employment under Female Voluntary Retirement Scheme. Therefore it must be held at the out-set that the Tribunal is not competent to entertain the demand of the union concerning employment under the special Female Voluntary Retirement Scheme.

6. The Special Female Voluntary Retirement Scheme is not a social security measure, much less under the NCWA. The Scheme apparently suffers from gender bias. It was more for the benefit of the management because the attempt thereunder was to replace female workers by male workers. This scheme was a special one introduced by the management over and above the NCWA-IV. Therefore the management was quite competent to unilaterally withdraw the scheme. As a matter of fact decision to withdraw this scheme was taken in the meeting of the Directors (Personnel) of the Company held on 27-11-1992. A circular was issued by the management vide letter No. 93 dated 2-3-1993 of the Head Office instructing that in view of the decision to withdraw the scheme, further voluntary retirement to female workers with employment to their dependant sons, should not be carried out.

7. Files concerning applications of both the female workers for voluntary retirement, were called for and the management had produced the same. On perusal of the files it is noticed that although their applications were approved by the competent authority, the process of carrying out the approvals were not completed till withdrawal of the Scheme in November, 1992. Therefore the aforesaid circular instructing to carry out further retirements, was quite applicable to the cases of both the female workers. The management was therefore justified in not giving effect to their applications for special Voluntary Retirement.

8. The union contended that the ultimate position is one of discriminations because these two female workers are deprived from getting benefit of the scheme whereas other applicants were given the benefit of the scheme. Even if it is assumed that discrimination took place in respect of these two female workers, the alleged discrimination itself does not confer any right on them to enforce their applications for voluntary retirement under the special Scheme. It was a special one introduced by the management, apparently for its own benefit and that too with a gender bias and therefore the management was quite competent to unilaterally withdraw this scheme at any time. The Scheme having been already withdrawn even before initiation of the industrial dispute the female workers named Somari Mahara and Fulia Mahara have no right to demand its implementation in their favour.

AWARD

"There is no merit in the industrial dispute raised by the female workers named Somari Mahara and Fulia Mahara. The industrial dispute in respect of other emp-

loyees as per list attached to the reference has been abandoned by the union."

Reference answered accordingly.

R. S. MISHRA, Presiding Officer

नई दिल्ली, 3 जून, 1998

कां.आ. 1251—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय खाद्य निगम, मद्रास के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मद्रास के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-5-98 को प्राप्त हुआ था।

[सं. एल-22012/45/एफ/93-आई आर (सी-II)]

लोली माऊ, डेस्क अधिकारी

New Delhi, the 3rd June, 1998

S.O. 1251.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government Industrial Tribunal, Madras as shown in the Annexure, in the industrial dispute between the employers in relation to the management of F.C.I. Madras and their workman, which was received by the Central Government on the 19-5-1998.

No. L-22012/45/F/93/I.R. (C-II)

LOWLI MAO, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU MADRAS

Monday, the 19th day of January 1998

PRESENT :

THIRU S. ASHOK KUMAR, M.Sc.B.L., IN-

DUSTRIAL TRIBUNAL

INDUSTRIAL DISPUTE NO. 53 of 1993

(In the matter of the dispute for adjudication under Section 10(1)(d) of the I.D. Act, 1947 between the workmen and the Management of Food Corporation

of India, Madras).

BETWEEN

The workmen represented by :

Shri Rex,
S/o S. Raja Pillai,
825, Icchampatti Colony,
9th Street, Tatabad Post,
Coimbatore 12.

—do—

The Zonal Manager,
Food Corporation of India,
Zonal Office, 2, Haddows Road,
Madras-6.

REFERENCE :

Order No. L-22012/45/F/93-IR(C.II), Ministry of Labour, dt. 7-6-1993, Govt. of India, New Delhi.

This dispute coming on for final hearing on Tuesday, the 2nd day of December, 1997, upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of M/s. Row & Reddy, Advocates appearing for the petitioner-union and of Tvl. K. Madhavan & K. Balakrishnan, Advocates appearing for the respondent, and this dispute having stood over till this day for consideration, this Tribunal made the following

AWARD

This reference has been made for adjudication of the following issue :

"Whether the action of the management of Food Corporation of India, Zonal Office, Madras in refusing to appoint Shri R. Rex, an ex-Gardner working in Engg. Division of Peelamedu, Coimbatore in pay scale of Rs. 522-8-538 . . . 688-13-740 and other allowances admissible is just paper and legal If not, to what relief is the workman entitled to ?"

2. On service of notices both the petitioner and the respondent appeared before this Tribunal and filed their claim and counter statement respectively.

3. The main averments found in the claim statement are as follows :—

The petitioner was employed as a Gardener in the Peelamedu Engineering Division Complex of respondent corporation. He worked as a full time employee from 15-6-87 to 15-12-89 for nearly 4-1/2 years. The petitioner has studied upon SSLC. He was originally engaged on daily wages. Subsequently by G. order dated 10-2-1987 he was fixed on a consolidated salary of Rs. 285 w.c.f. 1-6-86. The Food Corp. of India, New Delhi issued an order dated 6-5-1987 to all the Zonal Manager regarding regularisation of casual/daily rated/part-time employees. All these employees who have been performing duties of regular employees on a full time casual time basis and who had completed three months service as on 2-5-1986 were to be appointed on a regular basis. Such of those employees who did not fulfil those conditions were to be retrenched after being paid retrenchment compensation as per the I.D. Act, 1947. The petitioner applied for regular appointment. Two others, T. Gunasekhar, and Smt. Ramathal, who were working at Peelamedu Engineering Division as Scavenger and sweeper and who were similarly situated also applied. All three applications were forwarded to the Regional Office. As per Headquarters instructions dated 6-5-1987, Gunasekhar and Ramathal were given regular appointments. But without any rhyme or reason, the petitioner was not given any appointment even though he was fully qualified as per Headquarters instructions. The petitioner had worked continuous-

ly for 2-1/2 years from 15-6-1985 till the Engineering Division was shifted to Trichy. Thereafter the petitioner worked till 15-12-1989 when he was denied employment. The petitioner made a representation dated 19-3-1990, with a request for appointment as category IV employee on a regular basis. On 7-4-1990, the Zonal Manager, Madras asked the Senior Regional Manager, to investigate into the matter. But nothing has materialised. A dispute was raised by petitioner and conciliation was fixed on 18-7-1991, 4-9-1991, 14-10-1991, 29-10-1991, and finally on 18-11-1992 at Shastri Bhawan. The management remained absent throughout. Thereafter, on 2-2-1993, the dispute was referred for adjudication. The petitioner is fully qualified as per the respondent's order dated 6-5-1987. He had completed 3 months period as on 2-5-1986 and he was a full time/casual employee but was performing the duties of a regular employee. The petitioner should have been regularised in terms of the Headquarters order dt. 6-5-1987. When T. Gunasekar and Smt. Ramathal who worked along with the petitioner in the Peelamedu depot made similar circumstances had been regularised, there was no justification to deny regularisation to the petitioner, which amounts to discrimination. The petitioner had worked continuously from 15-6-1985 to 15-12-1989 in the Peelamedu depot as a Gardener, where packing, stacking, loading and unloading of food grains were carried on. It is a factory under the Factories Act. Since the petitioner had completed more than 480 days within a period of 2 years in the Peelamedu depot, which is an establishment covered by the Tamil Nadu Conferment Permanent Status Act, the petitioner should have been made permanent. The Headquarters instructions contained in the respondent's letter dated 6-5-1987 states that in case persons do not qualify they should be given retrenchment compensation under the I.D. Act. Even that was not given. The respondent has not complied with Sec. 25(F) of the I.D. Act, when petitioner was denied job after 15-12-1989. Hence the denial of employment is void. Since the Peelamedu division is an Industrial Establishment under Chapter 8V B of the I.D. Act, and more than 100 workmen had been employed in the preceding 12 months, the respondent should have taken permission under Sec. 25(N) of the I.D. Act, but the same was not done. Hence the petitioner prays to direct the respondent corporation to reinstate the petitioner in the regular scale of pay of Rs. 522—740 with allowances and other benefits, with effect from the date on which it was given to others.

4. The main averments found in the counter statement filed by the respondent are as follows.— The petitioner was engaged as a casual labourer for a total period of 41 days during the period from 27-10-1986 to 13-6-1987. Thereafter he was engaged as part time gardener during February, 1987 to June, 1987. He was paid a sum of Rs. 75 per month during May and June, 1987 as against consolidated wages of Rs. 285 as he did not attend part-time work on all these days. The petitioner was attending to watering of plants on piece rate basis upto October 1987. Thereafter he did not turn up for any work. The averment that the petitioner worked as full time employee from 15-6-1985 to 15-12-1989 is not correct. The petitioner was not entitled to

consolidated salary of Rs. 285, since he did not attend to work on all days. The order dated 6-5-1987 issued by the Food Corporation of India, regarding regularisation of Casual/Daily rated/Part-time employees does not apply to the petitioner. The petitioner did not fall within the purview of the said order. The other two cases of The Gunasekaran and Tmt. Ramathal mentioned by the Petitioner were attending part-time sweeper and scavenger work even after June 1987. On the contrary, the petitioner only attended to watering of plants on piece rate basis upto October 1987 and thereafter he did not turn up for any work in the Food Corpn. of India. Therefore, the case of Gunasekaran and Ramathal will not apply to the petitioner. Taking each case on its merits, the Headquarters, following the instructions given on 6-5-1987 regularised the appointments of Gunasekaran and Ramathal. It is incorrect to state that the petitioner worked continuously for 2-1/2 years from 15-6-1985 till the Engineering Division was shifted to Trichy and thereafter till 15-12-89 when he was denied employment, this averment is false. Regarding the representation dated 19-3-1990 made by the petitioner, Zonal Manager and Office authorities considered the matters and found that the petitioner did not come within the purview of the order dated 6-5-1987. The office of the Food Corporation of India, Coimbatore did not receive any communication regarding conciliation as mentioned. As such they are not responsible for being sent exparte. The petitioner is not entitled to be appointed to the said post. The averment that the petitioner had completed 3 months period as on 2-5-1987 and that he was full time casual employee and that he was performing duties of regular employee is incorrect. The petitioner did not qualify as per the norms in the order dated 6-5-1987. The alleged discrimination is incorrect and baseless. The petitioner has not worked for 480 days within the said period and as such no privilege under Tamil Nadu Conferment of Permanent Status Act, can be conferred upon the petitioner. The petitioner was neither eligible nor qualified to be given retrenchment compensation as per Staff Rules and regulations. The permission u/s. 25N of the I.D. Act. 1947 was not necessary since number of casual labour/part-time gardeners engaged were only two of three and that too not continuously, no permission under Sec. 25N was necessary. The claim statement filed by the petitioner is devoid of any merit. The respondent prays to dismiss the claim statement.

5. On behalf of the petitioner, the petitioner himself was examined as WW1 and Ex. W-1 to W-5 were marked. On behalf of the respondent one witness was examined and Ex. M.1 to M.5 were marked.

6. The point for our consideration is : Whether the action of the management of Food Corporation of India in refusing to appoint the petitioner in the pay scale of Rs. 522-8-538 . . . 688-13-740 and other allowances admissible is just, proper and legal ?

7. The contention of the petitioner is that he worked in the respondent management as a gardener from 15-6-1985 to 15-12-1989 for nearly 4-1/2 years and though he is fully qualified his service was not regularised whereas two other similar workers who work-

ed alongwith the petitioner, Gunasekar and Ramathal have been regularised in services and thus there is discrimination on the part of respondent's management in terminating the services of the petitioner. The contention of the respondent management is that the petitioner was engaged as Casual labourer for a total number of 41 days during the period 27-10-86 to 13-6-1987 and thereafter he was engaged as a part time gardener during the month February 1987 to June 1987 and he was paid consolidated wages of Rs. 285 p.m. and after October 1987 the petitioner did not turn up for work in the F.C.I. and therefore he cannot be compared with Gunasekar and Ramathal whose services were regularised. Ex. W-1 is a letter dated 22-9-1987 sent by the petitioner requesting the arrears of pay from the respondent. Ex. W-2 is a letter dated 19-3-1990 sent by the petitioner to the Zonal Manager, of the respondent's corporation requesting appointment order on regular basis. Ex. W-3 is the letter of the Zonal Office to the Senior Regional Manager, Food Corporation of India, Madras requiring clarification whether the petitioner and another person work beyond 2-5-1986. Ex. W-5 is the circular dated 6-5-1987 issued by the Headquarters of the management at New Delhi regarding the regularisation of casual/daily rated/part time employees of the respondent's corporation. Ex. M-2 series are payment orders for paying salary to the petitioner between November 1986 to February 1987 and also June 1987. Ex. M-3 series are pay orders and hand receipts and imprests voucher for payment of wages to the petitioner during 1987. Ex. M-4 series are sanction order for payment of salary to the petitioner and two other persons for the months of February, March and April 1987 and also an exgratia advance for the year 1986-87. Ex. M-5 is letter dated 10-2-1987 from Central District Manager of Food Corporation of India to several Districts regarding the enhancement of the wage structure to the part time casual labourers such as Sweepers/Scavengers/Gardeners/Water Carriers working in districts.

8. According to Ex. W-5 letter dated 6-5-87 issued by the Headquarters of the respondent's corporation all those employees full time/casual daily rated employees who have been performing duties of regular employees and who have been completed three months period of service as on 2-5-1986, should have been regularised. According to this letter there should be no more employment of casual/daily rated employees. In spite of the above Ex. W-5 letter dated 6-5-1987 the petitioner and two others have been continuously employed during 1987 as found from Ex. M-4 series. But in Ex. M-4 series it is mentioned that the petitioner and two other by name Ramathal and Gunasekar as part time Casual labourers and they have been paid consolidated pay of Rs. 285 as ordered by Ex. M-5 letter dated 10-2-1987. In the counter of the respondent, it is contended that between 27-10-1986 to 13-6-1987 the petitioner has worked only for 41 days and thereafter he was engaged as a part-time gardener from February 1987 to June 1987. The above such contention of the respondent could not be true. Ex. M-2 series shows that during November 1986, he has worked for 22 days by assist-

ing the Junior Engineer and taking ammonia printing etc. Similarly, in the month of December 1986 he has been paid wages for 17 days for assisting the Junior Engineer & taking ammonia printing. During January 1987 he has worked for 6 days in the same nature of work and in February 1987 he has been paid for similar nature of work for 3 days and during June 1987 he has been paid for 3 days wages for the same nature of work. On the contrary the respondent has filed counter stating that he was a part-time gardener between February to June 1987. If he was a part-time gardener and for the purpose of watering of plants he was paid at the piece rate, Ex. M-2 series shows that he was assisting the Junior Engineer and taking ammonia printing. In some of the hand vouchers and some of the hand receipts and imprests vouchers marked as Ex. W-8 series, it is mentioned that the petitioner was engaged in horticulture work and for maintenance of plants during 1987. The receipts and hand vouchers are from November, 1986 to February, 1987. Thus, it could be seen that according to the Ex. M-2 series the petitioner was engaged for assisting the Junior Engineer for taking ammonia printing and according to the Ex. M-3 series he was engaged in horticulture work. At the same time Ex. M-4 series shows that from February 1987 to April 1987 the petitioner has worked as part-time gardener and paid consolidated wages for Rs. 285 p.m. Therefore, the respondent himself is not clear as to what are the nature of works done by the petitioner in 1986 and 1987. The contention of the respondent is that the petitioner's case did not fall within the purview of the order dated 6-5-1987 which is marked as Ex. W-5. Ex. W-5 letter is with regard to the regularisation of casual/daily rated/full time employees if they have worked three months prior to 2-5-1986. Though the petitioner contended that he was a full time employee, Ex. M-4 series shows that he was a part-time gardener. But Ex. W-4 the extracts of the Note Sheet show the following particulars. At page 3 of the extracts, it is seen that the petitioner is only a gardener and not a part-time gardener whereas, Ramathal has been mentioned as part-time sweeper and Gunasekar mentioned as part-time Scavenger. At page 5, Note 110, it is seen that the petitioner has worked as a part-time gardener and his salary has been paid at Rs. 285 for the month of April 1987. At page 6 and page 7 of this note sheet extract, it is mentioned as follows : "The gardener R. Rex was working in this division for the past three years, we have been paying him Rs. 285 p.m. only for February and March 1987. Prior to this period he has been paid only from imprest of the Assistant Manager. Hence, if agreed, we may also furnish the Bio-data of Sri Rex." The above office note has been put up for preparing the reply for a telex message received from headquarters Madras on 6-10-1987 requesting particulars like date of birth, educational qualification etc. regarding the part-time sweeper and scavenger. Later to the above office note it has been further noted as follows details of age and qualification in respect of R. Rex, gardener is not warranted by Regional Office, Madras. Hence, we may delete the name of Sri Rex, Gardener. In the letter dated 7-4-1990 sent by Zonal Office, Senior Regional

Manager, Madras, it is mentioned that the petitioner and one Tmt. A. Seeniammal, part-time daily rated casual labourer have worked for a long time and not appointed on regular basis and their names were not indicated in the office order 2nd cited, and the Zonal Manager has been requested to examine thoroughly the date of engagement of other two part-time workers and intimate the Zonal office with documentary evidence whether they were engaged after 2-5-1986 to process further subject to the eligibility. There is no record to show whether any follow up action was taken by the respondent's management after the letter dated 7-4-1990. If proper follow up action was taken, the petitioner could have been appointed on regular service by the respondent's management. It is seen no further action was taken by the respondent's management to regularise the service of the petitioner. On the other hand Tmt. Ramathal, Part-time sweeper and Thiru Gunaskar, part-time Scavenger, who were also on the same cadre on consolidated wages of Rs. 285 p.m. have been subsequently regularised. The reasons submitted by the respondents management that the case of the petitioner is different from Ramathal & Gunasekar, on the ground that they were attending part-time sweeper and scavenger work even after June 1987 and, on the other hand the petitioner only attended to watering of plants and on piece rate wages upto October 1987 and thereafter did not turn up for any work. From Ex. W-4 it could be seen that the respondent was interested in regularising the part-time sweeper and scavenger Ramathal and Gunasekar as per the note dated 8-10-1987 and they have deleted the name of the petitioner, on the ground that the Regional office did not warrant the details of age and qualification of the petitioner. When Ramathal and Gunasekar were also part-time employees, like the petitioner those names and particulars have been forwarded for regularisation as per note dated 8-10-1987 whereas the name of the petitioner was deleted as found from Ex. W-4. In this connection the evidence of MW1 requires consideration. During cross-examination MW1 has deposed as follows : "Ex. W-4 is the note sheet. Only on reading Ex. W-4 fully, the purpose of the same could be understood. Seeniammal & Dhandapani have worked at Peclarmedu as A.G.1 and A.G.2. I don't know their signature. In that it is mentioned on 8-10-1987, that one Rex has been working as Gardener since three years and being paid Rs. 285 p.m. for February and March 1987 and prior to that a lesser amount was being paid out of imprest amount. Note sheet is mentioned in our office. According to that he has worked for three years. It has been annexed as a part. According to our records, he has worked as casual labour also. He has helped in taking ammonia print. In that the word 'casual' is not there. He has worked as semi-skilled work Assistant. Rs. 2 is paid per plant for watering. He has worked as part-time Gardener. From February 1987 he was paid consolidated pay. No written notice was given to petitioner before removing him from service. No prior notice was given. Petitioner has given petition dated 19-3-1990 requesting to regularise him W-3 is the reply given by Senior General Manager to the above said letter. He has asked Divisional Manager to look into the matter and send the relevant records. The same has been

sent by Senior Manager to Regional Manager, I don't know whether the same has been produced before this Tribunal. The management has rejected petitioner's claim for permanent status by showing the actual number of days worked by him. Copy of that report was not sent to the petitioner." According to Ex. W-4 petitioner has worked under the respondent management for the past three years continuously. But the respondent has not regularised his service whereas the respondent regularised the service of the similarly placed persons as mentioned above. The respondent is not able to submit any convincing reasons for such discrimination.

9. The respondent has not given any termination order to the petitioner. But the petitioner has not been provided with any work or any notice was not served to him and he was not paid any compensation. The respondent's management has not followed the provisions contained in section 25 of the I.D. Act. In 1986 (1) LLJ P 127, the judgment of Hon'ble Supreme Court is as follows : "It is clear from the pleadings and from the documents noted above how the respondent-bank managed to get rid of the appellant. The disclosures made in the confidential circular make our task easy in holding that the Bank was determined to adopt methods to terminate the services of the employees like the appellant. The appellant was not told that he would be struck off the rolls if he passed the matriculation. He was not given any order in writing either refusing work or informing him that his name would be struck off the rolls. The case of the bank is that he was orally informed that his name has been struck off. Striking off the name of a workman from the rolls by the employer amounts to 'termination of service' and such termination is retrenchment within the meaning of S.2(oo) of the Act if effected in violation of the mandatory provision contained in S.25-F and is valid. In this case the facts need only to be stated to hold that the petitioner's name had been struck off the list contrary to the mandate contained in S.25-F. This Court has held in *Delhi Cloth & General Mills Ltd., Vs. Shambu Nath Mukherjee & Ors* (1978 1 LLJ 1), the striking off the name from the rolls by the management is retrenchment within the meaning of S.2(oo) of the Act. While reading Sec.25-F, 25-B and S.2(oo) Krishna Iyer, J in *State Bank of India Vs. Shri M. Sundara Money* (1976 1 LLJ 478), has observed that the words 'for any reasons whatsoever' occurring in S.2(oo) are very wide and almost admitting of no exception. It was made clear that a comprehensive definition has to be effectuated to protect the weak against the strong in construing the ambit of the words contained in S.2(oo). Pithily he observed that "without further ado, we reach the conclusion that if the workman swims into the harbour of S.25-F, he cannot be retrenched without payment, at the time of retrenchment, compensation computed as prescribed therein read with S.25-B(2)."

10. According to 1990(1) LLJ Page 7 the judgment of the Hon'ble Supreme Court even persons who are appointed as daily rated worker and allowed to work for a period of three years, it would be hard and harsh to deny them confirmation in respective posts on ground that they lack prescribed educational qualifications. "The main controversy centres

around the question whether some petitioners are possessed of the requisite qualifications to hold the post so as to entitlement be confirmed in the respective posts held by them. The indisputable facts are that the petitioners were appointed between the period 1983 and 1986 and ever since, they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily-rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualification. In our view, three years' experience, ignoring artificial break in service for short period/periods created by the respondent, in the circumstances, would be sufficient for confirmation. If there is a gap of more than three months between the period of termination and reappointment that period may be excluded in the computation of the three years' period. Since the petitioners before us satisfy the requirement of three years' service as calculated above, we direct that 40 of the senior most workmen should be regularised with immediate effect and the remaining 118 petitioners should be regularised in a phased manner, before 1 April, 1991 and promoted to the next higher post, according to the standing orders. All the petitioners are entitled to equal pay at par with the persons appointed on regular basis to the similar post or discharge similar duties, and are entitled to the scale of pay and all allowances revised from time to time for the said post. We further direct that 16 of the petitioners who are ousted from the service pending the Writ petition should be reinstated immediately. Suitable promotional avenues should be created and the respondent should consider the eligible candidates for being promoted to such posts." This is not a case in which the petitioner was terminated on the ground of want of qualification. Petitioner has studied upto S.S.L.C. (S.S.L.C. failed) and belongs to Backward class. To work as a gardener, his educational qualification is more than sufficient. On 8-10-87, when the respondent was forwarding the particulars like age and qualification of the part-time sweeper and scavenger by name Ramathal and Gunasekar for regular appointment, the respondent has withheld the name of the petitioner, on the sole ground that this particulars are not warranted by the head quarters at Madras. Even after Ex. W-3 letter dated 7-4-1990 requiring particulars of R. Rex part-time gardener who is supposed to have been working from 15-6-1985, there is no proof for any follow up action for the above Ex. W-3 letter. Therefore, it could be seen that for some reason known to them, the respondent failed to take further action to regularise the petitioner as a gardener.

10. For the above said reasons, I hold that the action of the management of Food Corporation of India, Zonal Office, Madras in refusing to appoint the petitioner R. Rex. Gardener in the pay scale of

Rs. 522-8-538...688-13-740 and other allowances admissible is not just and improper and illegal and he should be reinstated with back wages and other attendant benefits from November 1987. Award passed. No costs.

Dated, this the 19th day of January, 1998.

THIRU S. ASHOK KUMAR, Industrial Tribunal

WITNESSES EXAMINED

For Petitioner-workman

WW1 : Thiru R. Rex.

For Management :

MW1 : Thiru N. Mahalingam.

DOCUMENTS MARKED

For Petitioner-workman :

Ex. W1/22-9-97 : Letter from petitioner to respondent requesting for arrears (copy)

Ex. W-2/193-90 : Representation from petitioner (xerox copy)

Ex. W-3/7-4-90 : Letter from Respondent's Zonal Office, Madras to District office—requesting to examine the date of engagement of petitioner (xerox copy)

Ex. W-4/7-4-90 : Extract from file Register (xerox copy)

Ex. W-5/6-5-97 : Circular of Food Corpn. of India, New Delhi (xerox copy)

For Respondent-management :

Ex. M.1/4-2-97 : Authorisation letter given by the respondent to give evidence.

Ex. M-2/4-2-97 : Extracts from Ledger (xerox copy)

Ex. M-3/4-2-97 : Receipts for payment (13 nos) (xerox copy)

Ex. M-4/4-2-97 : Sanction order (3 nos) (xerox copy)

Ex. M-5/10-2-87 : Letter No. Estt. 1/1(19/83) (xerox copy)

नई दिल्ली, 3 जून, 1998

कां०आ० 1252—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै० एम्० सी० सी० एल्० के प्रबंधन के संबंध निम्नो जको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-5-98 को प्राप्त हुआ था।

[सं० एल्-22012/96/94-आई आर (सी-II)]

लौली माऊ, डैस्क अधिकारी

New Delhi, the 3rd June, 1998

S.O. 1252.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of

the Central Government Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. S.C.C. Ltd., and their workman, which was received by the Central Government on the 14-5-1998.

[No. L-22012/96/94-IR (C-II)]
LOWLI MAO, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-II, AT HYDERABAD

PRESENT :

SHRI M. F. N. PATRUDU, B.Com., B.L.
CHAIRMAN.

Dated, the 27th April, 1998

I. D. NO. 209 OF 1994.

(CENTRAL)

BETWEEN :

The President,
Singareni Ghani Karmika Sangham,
408, Sreyas Apartments,
Sindh Colony, Secunderabad.
..PETITIONER

AND

The Chief General Manager,
S. C. C. Limited,
Manuguru, Khammam District (A. P.).
RESPONDENT

APPEARANCES :

Shri Srinivasa Sarma, Advocate representative :
for Petitioner.

Shri K. Srinivasa Murthy, Advocate representative :
for Respondent.

AWARD

1. Singareni Collieries Company Ltd. is a Coal Mine and comes under the Mines Act. Petitioners is its Karmika Sangham. It is represented by its President. The Chief General Manager of the Company at Manuguru Mine is the respondent.

2. The dispute is referred by the Ministry of Labour, Government of India New Delhi to decide :—

“Whether the action of the management of S.C.C. Limited, Manuguru in not paying settling-in-allowances to 77 workers as per the list enclosed, is justified ?”

“If not to what remedy these workers are entitled to ?”

3. Both parties appeared through their advocates and filed their pleadings.

4. The petitioner in their claim statement stated that all the workmen in the dispute are represented by their Union and they are employees of the Mine. It is further stated that when they were working in Coal Mines at Mandamarri area of Adilabad District they learnt that the management exhibited a notice on the notice board dated 9-11-1992 stating that there are vacancies in Kothagudem, Yellandu, Manuguru Divisions and invited transfer applications from the workers. The workmen submitted transfer applications giving the choice of their place. Most of the workmen in the dispute wanted Kothagudem or Yellandu but they are transferred to Manuguru which is not their request place. On receiving proceedings they joined at Manuguru. Later they requested for settling allowances through the petitioner.

Their claim for settling allowances was rejected by the respondent. Conciliation efforts failed. Hence the reference for adjudication. The names of the 67 workers and not 77 are furnished in the claim statement with the amount of entitlement of each workman.

5. The respondent in their counter disputed about the jurisdiction of this tribunal to adjudicate the dispute. It is next stated that the workmen are not entitled to any settling allowances as it is purely a request transfer. The specific plea of respondent is a notice was displaced at all the mines of the Collieries that there are vacancies in Kothagudem region comprising, Kothagudem, Yellandu and Manuguru areas and called for applications from the interested persons who are willing to go to those places on transfer. Large number of workmen submitted applications but only 78 workmen sought for request transfer to Manuguru and accordingly they are transferred to Manuguru. It is also stated that all the three places are close by and located at Khammam District and all the employees transferred to Manuguru are natives of the same districts and they availed the benefit of transfer from Adilabad district to their native district of Khammam and now making an illegal demand. It is also stated that the workmen accepted the transfer proceedings and joined duties and did not make any claim for settling allowances at Manuguru with the concerned officials but now making demand through the Union and the same cannot be accepted.

6. 4 witnesses are examined on behalf of petitioners and 4 documents are marked. WW1 to WW4 are the workmen who are transferred from Mandamarri division to Manuguru. Their evidence is that they are originally appointed at Manuguru in the year 1988 and later they are transferred to Mandamarri Division, Adilabad District, on administrative grounds and they reviewed settling-in-allowances at that time. While working at Somaguda Mine of Mandamarri division, they came to know about the notice and the vacancies and they made application for request transfer not to Manuguru but to Kothagudem and Yellandu but their request is not considered hence they have joined at Manuguru and shifted their belonging through a Lorry and spent amount for their travelling expenses and transport charges. Ex. WW1 to WW4 are the transport bills of the Lorry.

7. Three witnesses are examined on behalf of respondent and 10 documents are marked. MW1 is the Asstt. Accounts Officer and MW2 is the Jr. Accounts Officer MW3 Sr. Personnel Officer of the Collieries.

Important documents are the request letters of the workmen i.e. Ex. M1, Ex. M3, and Ex. M4 and the transfer proceedings Ex. M2 and the establishment manual book Ex. M5 and the relevant entry dealing with settling allowance is Ex. M5 and the bunch of request transfer application of workmen which is Ex. M9.

8. Heard arguments are on both sides.

9. The point for determination are :

- (1) Whether the tribunal is having jurisdiction.
- (2) Whether the workmen in dispute are entitled to any settling-in-allowances.
- (3) Whether the respondent is justified in not paying the settling-in-allowances ?

10. Point No. 1 : Section 10(d) of Industrial Disputes Act deals with references of disputes to Boards Courts, Tribunals, Sub-Section (1)(D) of Section 10 says that an appropriate Government can refer the dispute to tribunal for adjudication. Sec. 7(A) of the Act deals with establishment of tribunal, the appropriate government may by notification constitute one or more Industrial Tribunals for adjudication Industrial Disputes.

The arguments of the learned counsel for the respondent is that this tribunal is constituted by the State Government of A.P. not by the Central Government as such the Central Government cannot refer the dispute to this Tribunal. I do not accept this argument. The 3rd proviso to Sub-Section (1) (d) of Sec. 10 which is inserted by Act 46 of 1982, which is an effect from 20-1-1984 clearly says that where the disputes in relation to which the Central Government is the appropriate government it shall be competent for that Government to refer the dispute to a Labour Court, or an Industrial Tribunal, as the case may be, constituted by the State Government. Therefore, the proviso confer power on the Central Government that it can refer a dispute to the tribunal constituted by the State Government. Hence there is no force in the arguments of the learned counsel for the respondent about the competence of the Central Government to refer the dispute to this tribunal. Therefore I hold that the tribunal is having jurisdiction to adjudicate the dispute.

11. Point No. 2 : What is settling allowance is an important aspects to be noted before deciding about the entitlement of the said allowance by the workmen. Ex. M5 is the establishment manual of the collieries. At page 157 of this manual the detailed guidelines of settling allowances are mentioned. This allowances is intended for the Officers or the staff, transferred from one Collieries to another and is regulated as per the provisions of companies T.A. Rules. One of the guidelines is any of the employees transferred at their request are not eligible for settling-in-allowance. This guideline is marked as Ex. M5(a) at page 157 of 1611 GI/98--15

Ex. M5. It is also noted that the employee after reporting at the new station on transfer shall have to claim the said allowance by giving application with all details.

The guidelines are not in disputes. The petitioner claim is that their transfer is not request transfer hence the employees are entitled for settling in allowances. The respondent pleads that it is not a transfer on administrative grounds and it is purely on request, hence they are not justified to claim allowances.

To decided this point it is necessary for me to look into the oral and documentary evidence. The admitted facts are that Kothagudem, Yellandu and Manuguru mines are located at Khammam district and that the all the workmen in dispute are appointed in totally in the above mines being natives of Khammam district and they are transferred on administrative grounds to Mandamarri division in Adilabad district and they received settling in allowance at that time. The other admitted fact is about display of the notice shownig the vacancies at Manuguru, Kothagudem and Yellandu. Ex. M1 is the transfer request letter of WW1. He admitted that one Sri D. Ramachandra and L. Chandu signed as witness on his request transfer letter Ex. M1 but denied that he did not make any request to transfer him to Manuguru instead of Kothagudem. When I perused Ex. M1 it disclosed that WW1 requested for his transfer to Manuguru area. He has given consent for the said transfer. This letter is dt. 17-11-92 and it is prior to Ex. M2 transfer orders. Similarly Ex. M3 is the request letter of WW2 giving his consent for transfer to any mine in Manuguru area and Ex. M4 is the consent letter of WW3. Ex. M9 is the bunch of request letter of other workmen. The witness admitted about these letters. The contents of these letters clearly establish that the workmen has given their consent to work in any mine near Manuguru. All those letters are prior to the transfer proceedings dt. 30-12-92. The transfer order is Ex. M2. In the first paragraph of Ex. M2 it is stated that in consideration of their applications the following employees are transferred to Manuguru area. The names of 68 workmen are mentioned in this proceedings. In page 3 of Ex. M2 it is clearly mentioned that as the transfer are effected at their own request they are not entitled to the usual customary concession including that of settling-in-allowances etc. The witnesses Ex. WW-1 to WW-3 the workmen also admitted about the orders in Ex. M2. Close perusal of Ex. M1, M3, M4 and M9 clearly established that the workmen in disputes requested transferred either to Yellandu or to Kothagudem but later they have given their consent to go to Manuguru area. The request letters also establish that they are native Khammam district and the mines at the above 3 places are very nearer to their native places. It is an admitted fact that they are originally appointed in these mines and subsequently transferred to Mandamarri division in Adilabad district. Since they are working at Adilabad district which is far of from Khammam and as the Management displaced a notice to transfer the interested employees to the Mines in Khammam district the workmen in disputes submitted request letters and as there are vacancies available in Manuguru they are transferred. The evidence of MW3 who worked as

Welfare Officer of the employees and now personal officer clearly establish all the above facts.

In the cross-examination WW1 it is elicited whether he is interested to go back SMG I, II of Mandamarri Division, in Adilabad Division instead of Manuguru. He gave a negative answers so also WW2 and WW3. WW4. So the workmen are not prepared to go back to Mandamarri from Manuguru and definitely they intend to work at Manuguru which is nearer to their native place.

Therefore the evidence of the witnesses as well as documents clearly established that all the workmen in disputes who are natives of Khammam district made request applications for their transfer and after getting of benefit of transfer they are claiming settling on the flimsy grounds they are transferred to Manuguru against their consent and not to the place of their choice. Further Manuguru Kothagudem and Yellandu are nearer to each other. All the above 3 mines are nearer to the native places of the workmen when compared to Mandamarri. For the same reasons the workmen opted transfers to these mines.

Therefore I hold that the transfer of the workmen in dispute is request transfers therefore they are not entitled for settling-in-allowances.

12. Point No. 3 : Ex. M2 is the transfer proceedings wherein it is clearly mentioned that the workmen who are transferred under the said proceeding are not entitled for settling allowances or any other customary benefits. It is issued on 31-12-92. The workmen in disputes received the proceedings and having accepted the contents of Ex. M2 reported to duty at Manuguru. They did not make any protest about Ex. M2. They did not give any applications to the management of the collieries, expressing their grievances. They did not file any claim for settling-in-allowances before the concerned accounting authorities at Manuguru. The evidence of MW1 and MW2 clearly establish these facts. The petitioners did not file any document to show that they filed their claims before the accounting authorities at Manuguru and claiming any amount by way of any settling allowances. There is no suggestion either to MW1 or to MW2 that any of the workmen made any claim towards the settling allowances. In the above circumstances I am of the opinion that the respondent management is justified in not paying settling allowances. The rule clearly says that the employees on transfer must make a claim about his allowances to the management. If the claim is rejected then he can agitate.

In this case the workmen did not file any document to show that they made any such claim and their evidence is totally silent that they made any such claim. On the other it was elicited in the cross-examination that they did not submit any such claim in the accounts departments at Manuguru claiming the settling allowances. The evidence on behalf of respondent establishes that the workmen did not prefer any claim for settling allowance.

Taking all these aspects in to consideration the point is answered in favour of respondent.

13. In the result I hold that the workmen in dispute are not entitled to claim any settling allowances and the action of the management of S.C.C. Limited in not paying settling allowances to the workmen is justified and workers are not entitled to any relief.

Typed to dictation, corrected by me and given under my hand and the seal of this Tribunal on this the 27th day of April, 1998.

M.E.N. PATRUDU, Chairman

APPENDIX OF EVIDENCE

NUMBER OF WITNESSES EXAMINED

For Workmen/Petitioner :

WW1—G. Manya

WW2—D. Ramachander

WW3—P. Lakshminarayana

WW4—Ch. Shankaraiah

For Management/Respondent :

MW1—Sri N. Chakravarthi

MW2—Sri M. Anand Kumar

MW3—Sri G.E.S. Prakasha Rao

DOCUMENTS MARKED

For Workmen/Petitioner :

Ex. W1—dated 15-1-93 Transport Bill

Ex. W2—dated 15-1-93 Transport Bill

Ex. W3—dated 18-1-93 Transport Bill

Ex. W4—dated 13-1-93 Transport Bill

For Management/Respondent :

Ex. M1—dt. 17/22-11-92 : Request transfer letter of G. Manya.

Ex. M2—dt. 31-12-92 : Xerox copy of order of Management No. P(PM)/4/3752/3004.

Ex. M3—dt. 17/18-10-92 : Request transfer letter of D. Ramachander.

Ex. M4—dt. 17/22-11-92 : Request transfer letter of P. Lakshminarayan.

Ex. M5—dt. - - : Establishment manual book Page No. 157 'Settling-in-Allowance' in Ex. M5.

Ex. M6—dt. 30-5-89 : Office order copy transfers from Manuguru to Mandamarri (100).

Ex. M7—dt. 30-1-90 : Office order copy transfers (40).

Ex. M8—dt. 30-1-90 : Daily cash book.

Ex. M8(a)—dt. 30-1-90 : At page 65 in Ex. M8.

Ex. M9—dt. 30-1-90 : Request transfer letter of 54 workers.

Ex. M9(a)—dt. 17/22-11-92 : Application of B. Kotaiah.

Ex. M10—dt. 27-12-92 : Forwarding letter of G.M. MM to G.M. (Person Kgm D. (3 fokos).

नई दिल्ली, 3 जून, 1998

कां.अं. 1253.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 11) की धारा 17 के अनुसरण में केन्द्रीय सरकार में ई. सी. एल. के प्रबंधन के संबद्ध निपोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आसंसोल के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-5-98 को प्राप्त हुआ था।

[सं. एन-22012/406/94-आई और (सी-II)]

लोली माओ, डेस्क अधिकारी

New Delhi, the 3rd June, 1998

S.O. 1253.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Asansol as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. E. C. Ltd. and their workman, which was received by the Central Government on the 19-5-98.

[No. L-22012/406/94-IR. (C-II)]

LOWLI MAO, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, ASANSOL

Reference No. 16-of 1995

PARTIES :

Employers in relation to the management of
Kunustoria Colliery of E.C.L.

AND

Their Workmen.

PRESENT :

Shri R. S. Mishra, Presiding Officer.

APPEARANCES :

For the Employers : Shri P.K. Das, Advocate.

For the Workmen/Union : Shri C. D. Divedi, Advocate.

INDUSTRY : Coal. STATE : West Bengal.
Dated. the May, 1998

AWARD

By Order No. L-22012/406/94-IR. C-II, dated 24-3-95 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :—

“Whether the action of the management of Kunustoria Colliery of E.C.L. in denying wages to Shri Bhim Barhi, Underground Loader for the period from 1-1-87 to 28-8-87 is legal and justified? If not, to what relief the workman concerned is entitled to?”

2. Admitted facts :—

The concerned workman named Bhim Barhi was wrongly superannuated by the management on 1-1-1987. Subsequently vide management's order No. ECL/KNT/PER/1840 dated 28-8-1987, the earlier order of superannuation was revoked and the workman was instructed to resume his duty with immediate effect, thereby allowing his service to continue. Accordingly the workman resumed his duty on 29-8-1987. The question of payment of wages to the workman for this idle period from 1-1-1987 to 28-8-1987 has not yet been decided.

3. The union's version is that the management due to its own mistake issued the wrong order of superannuation with effect from 1-1-1987 and that subsequently the management suo-moto corrected its mistake by revoking the order of superannuation on realising that the earlier order of superannuation was wrong. The union further says that the forced idleness from 1-1-1987 to 28-8-1987, was not the result of any mistake/fault on the part of the workman whether it was the result of a wrong action by the management and that accordingly the management is liable to pay wages for this idle period.

4. Management's version :—

Superannuation with effect from 1-1-1987 was given basing on the entry in the statutory Form 'V' Registrar regarding date of birth. Thereafter the workman raised a dispute concerning the alleged date of birth and then his age was assessed as 42 years as on 1-1-1973. Consequently the workman was found to be entitled to service for some more years and the earlier order of superannuation was accordingly recovery with direction for resumption of duty by the workman. Apart from that because of “no work no pay” rule, the workman is not entitled to get wages for the idle period.

5. The union has filed a copy of management's order No. ECL/KNT/PER/1840 dated 28-8-1987, under which the earlier order of superannuation was revoked with direction for resumption of duty. The order is as follows :—

“Sri Bhim Barhi, Ex-underground loader U.M. No. 33213 of Kunustoria colliery who was superannuated on and from 1-1-87 in pursuance of the Notice of Superannuation letter No. ECL/KNT/

PER[RS-70]1601 dated 9/13-6-86 is hereby allowed to resume his duty with immediate effect as his age has been accepted by the competent authority as 42 years as on 1-1-1973. He is being allowed without any back wages.

Sri Barhi is hereby directed to report for duty to the Maager, Kunustoria colliery.

This is as per letter No. A. KNT] P&IR[2]7145 dated 27-8-87 from the Dy. C.P.M.[Knt. Area."

The underlined portion in the forside order is very important, for the purpose of this dispute. It says that the management accepted the workman to be 42 years old on 1-1-1973. But it does not indicate on what basis, the management decided to except this age. Even now also the management does not disclose, on what basis the decision was taken to treat the age of the workman as 42 years on 1-1-1973. Unless the basis or reason for the changed decision is disclosed, it cannot be known whether the management was not at fault in giving the earlier superannuation with effect from 1-1-1987. Suppression of this material, benefits only the management. In such a situation, the law of presumption goes against the management and a presumption should be drawn that the management deliberately suppressed the material lest it would disclose that the workman was wrongly superannuated because of its on fault.

6. Reason for idleness during the disputed period being thus traceable only to the management's fault, ages for the idle period ought to be paid by it to the workman.

7. Order :—

The action of the management in denying wages to the concerned workman named Bhim Barhi for the idle period from 1-1-1987 to 28-8-1987, is illegal and unjustified. Wages for this idle period be forthwith disbursed by the management to the workman.

R. S. MISHRA, Presiding Officer.

नई दिल्ली, 3 जून, 1998

का०आ० 1254.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंगरेनी कोलरीज कम्पनी लिमिटेड के प्रबंधन के संबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-5-98 को प्राप्त हुआ था।

[सं० एल-22012/567/95-आई आर (सी-II)]

लोली माऊ, डेस्क अधिकारी

New Delhi, the 3rd June, 1998

S.O. 1254.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Hyderabad-I as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. S.C.C. Ltd. and their workman, which was received by the Central Government on 14-5-98.

[No. L-22012/567/95-I.R. (C-II)]
LOWLI MAO, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

Industrial Dispute No. 129 of 1996

PRESENT :

Sri V. V. Raghavan, B.A., LL.B., Industrial Tribunal-I.
Dated, 20th day of March, 1998

BETWEEN

Sri A. Venkat Reddy,
Secretary, S.C. Collieries
Clerical Union,
CCA 504302 .. Petitioner

AND

The General Manager (Personnel),
M/s. Singareni Collieries Company
Limited, Kothagudem-507101 .. Respondent

APPEARANCES :

Sri K. Vasudev Reddy, Advocate—for Petitioner.
Sri K. Srinivasa Murthy, and Miss G. Sudha, Advocates—
for the Respondents.

AWARD

The Government of India, Ministry of Labour, New Delhi, by its Order No. L-22012/567/95-I.R. (C-II) dated 26-9-96 U/s. 10(1)(d) of the I. D. Act has referred the following dispute for adjudication :

"Whether Mr. G. Thirupathi Rao presently working as Grade-B Stenographer at Coal Chemical Complex of S.C.C.L. (AP) is entitled for promotion as Stenographer Grade-B w.e.f. 1-4-89 and to Grade-A w.e.f. 1-4-94 by taking into account of his service as Stenographer or not ? If not to what relief to he is entitled to ?"

Both the parties appeared and filed their pleadings.

2. The workman hereinafter to be called as Petitioner filed a claim statement contending as follows :

The petitioner was appointed as Steno-typist in Grade-D on 11-9-74. He opted to work as Clerk Grade-II with effect from 20-8-79 by foregoing the Steno allowance of Rs. 25 per month. He was promoted to clerk Grade-I w.e.f. 1-3-81. He was redesignated as Stenographer w.e.f. 2-7-84. The post of Steno-typist and Clerk Grade-II are treated as one and the same for fixation of pay scale, seniority and promotion etc. The Steno-typist is paid extra allowance of Rs. 25 per month. Similarly, the Clerk Grade-I and Stenographer are treated as same for the purpose of pay scale, seniority and promotions, except allowance of Rs. 50 per month to the Stenographers. There was a settlement dated 3-3-89 between the management and major trade unions by which the management agreed to promote stenographers who have put in six years of service in Grade-I to the post of Grade-B. The petitioner was promoted to Grade-I w.e.f. 1-3-81. He was entitled to Grade-B in terms of settlement from 1-4-89 from which date the other employees in Grade-I who have completed the six years of service were promoted as Grade-B. The petitioner is also entitled to be promoted to Grade-A from 1-4-94 on completion of 5 years of service in Grade-B. But the petitioner was not promoted to

Grade-B along with others on 1-4-89. He was promoted subsequently. Hence, an Award may be passed directing the respondent to promote the petitioner as Grade-B Stenographer w.e.f. 1-4-89 and Grade-A Stenographer w.e.f. 1-4-94 along with attendant benefits.

3. The respondent management filed a counter admitting the appointment and fixation of grades, etc., of the petitioner but contending as follows :

The petitioner joined the service of the company on 11-9-74 as Steno-typist, clerical Grade-II. He was not in Grade-D. He was not in a position to discharge the functions of Steno-typist. He was converted into clerical Grade-II at his request without the Stenographer's allowance. The posts of clerical Grade-II and Steno-typist are of Grade-II only and so taking his total service into consideration, he was promoted as clerical Grade-I w.e.f. 1-3-81. There was settlement on 26-6-84 by which it was agreed that the posts of Steno-typists Grade-II are abolished and all the Stenographers are made clerical Grade-I by adding the special allowances to the basic pay with w.e.f. 1-7-84. There upon the petitioner again got himself converted into Steno-typist and got his pay fixed in that capacity. There is a further settlement dated 3-3-89 by which the respondent management agreed to introduce the cadre scheme by which a stenographer working for 6 years is entitled to Technical B-Grade and the B-Grade employee who has experience of 5 years is entitled to A-Grade. The petitioner's claim that his service of Clerical Grade-I and service of stenographer Grade-I should be added together for making up 6 years for consideration to Grade-B is not correct. The petitioner did not work for 6 years as a Steno-typist or Stenographer. The functions of clerks and Stenographers are quite different. The petitioner was given Grade-B after completion of 6 years service. So the petitioner is not entitled to any relief.

4. The point for consideration is :

"Whether the petitioner is entitled to be promoted as Grade B Stenographer from 1-4-89 and Grade-A Stenographer from 1-4-94 ?"

5. The petitioner examined himself as WW-1 and filed Exs. W-1 to W-14. The Dy. Chief Personnel Manager and Sr. Personnel Officer of the company were examined as MWs-1 and 2 and they filed Exs. M-1 to M-6.

6. The petitioner is an inefficient stenographer who failed in the examinations once in 1957 and again on 10-7-85. He seeks promotion on the basis of his length of service. He is hunting with hounds and running with the hares to suit his convenience. He is not entitled to any relief.

7. The reasons are as follows :

The petitioner was appointed as Steno-typist which is in clerical Grade-II cadre by Ex. W-1 dated 6-9-74. While he was working in Civil Engineering Department, he was asked to work in purchases and Establishment and Accounts Department as well as in the Personnel Department by Ex. M-13 dated 2-6-79. Perhaps, the work was heavy and so he applied for conversion into Clerk Grade-II on 7-7-79 and his request is acceded to by Ex. W-2 dated 11-8-79. The petitioner deposed that he was not keeping good health and so he asked for conversion as a Clerk. His service as Steno-typist Grade-II and Clerk Grade-II are taken together and he was promoted to Grade-I in 1981 by Ex. W-3 dated 5-8-81. It was done in pursuance of a cadre scheme approved by the management for securing greater efficiency and effective utilisation of service as mentioned in Ex. W-3. The petitioner agrees that he availed the benefit of said cadre scheme for clerical staff and had he continued as a stenographer he would not have got that promotion. Again in 1984, there was a settlement Ex. M-2 on 26-6-84 between the management and the unions. Item No. 9, demand No. 12 II-B relates to stenographers and it reads as follows :

It is agreed that the vacancies of Stenographers will be reviewed, identified and filled up within 3 months. It is further agreed that the Steno-Typists Sr. II who are presently working shall be placed in Stenographers Grade-I by merging the Steno Allowance of Rs. 50 p.m. in their basic and fixing their pay at the next stage of the scale of Clerical Grade-I. In future there will be no designation allowance of Rs. 50 p.m. now being paid to the Stenographers in Clerical Grade-I will also be merged in their basic pay and their basic pay shall be fixed in the next higher stage. This clause will be implemented with effect from 1-7-1984.

By virtue of this settlement, the salary of the Stenographers Grade-I is increased very much for the reason, that the allowance of Grade-II Steno-typist is merged in the basic and fixed in the clerical Grade-I. Again, the special allowance of Grade-I Stenographer is merged in the basic pay and pay is fixed in the next higher stage. To avail this benefit, the petitioner again jumped into the post of Stenographer and at his request he was designated as Steno-typist w.e.f. 2-7-84 by Ex. W-4 office order dated 30-6-84. He got this benefit also. The seniority of himself and other Grade-I Stenographers is shown in Ex. M-6 of which Ex. M-3 is a copy. Perhaps due to his completion of 6 years of service taking his clerical Grade-I as well as Stenographers Grade-I service, into consideration he was asked to appear for the test and interview on 28-6-87 for promotion as Sr. Stenographer by Ex. W-5 dated 16-6-87. The petitioner admits that he failed in this examination and he was not promoted as Senior Stenographer while his juniors were promoted. He did not raise any dispute about this as he knows his capacity. But he comes forward with a lame excuse that the dictator was given for 1 minutes only in which his efficiency could not be decided.

8. There was another settlement Ex. W-1 on 3-3-89 by which the Clerks Grade-I and Sr. Stenographers were given another opportunity for promotion. The relevant clauses are in annexure-II to Ex. M-1 settlement and it would be useful to extract the same for better appreciation :

(A) CADRE SCHEME FOR CLERICAL STAFF :

- (1) Graduates with Typewriting lower Grade Certificate shall be recruited as Clerk Grade-II.
- (2) Grade II Clerks with 6 years service in Grade-II be considered for promotion to Grade-I based on assessment report.
- (3) Graduates, presently on rolls in Grade-III who did not qualify in typewriting and non-graduates presently on rolls in Grade III will be eligible for promotion to Grade-II during 10 years of service as Grade-III clerks.
- (4)(a) Clerks in Grade-I will be eligible to be considered for promotion to posts in Special Grade after 8 (eight) years service in Grade-I, subject to selection by D.P.C. and against vacancies in the Special Grade.
- (b) Special Grade Clerks will be eligible for consideration for promotion against identified vacancies of the posts of Office Superintendents in Grade-A after 5 years of service in Special Grade subject to their qualifying in the prescribed test.
- (5) (a) Graduates in Clerical Grade-I will be eligible for consideration for promotion to identified vacancies of Office Assistants in Technical and Supervisory Grade-B after 5 years of service in Grade-I subject to qualifying in the prescribed test.
- (b) After 5 years in Technical and Supervisory Grade-B they will become eligible to be considered for placement in Grade-A as Office Superintendents based on assessment Report (DPC).
- (6) Existing Clerks in Grade-II without the prescribed qualifications as (1) above will be eligible for promotion to Grade-I after 6 years of service and as Special Grade Clerks as in 4(a) as a Special case.

(7) Existing Clerks who have completed 9 years and during years service in Grade-I as on 1-1-1988 as a Special Measure will be considered for promotion as Special Grade Clerks. This promotion will be effected during the financial year 1989-90. This Review will be done on 1-1-1989 and 1-10-1989. They will, However, continue to perform the duties of Clerk Grade-I, if required.

(7) All the general conditions detailed in the settlement will be applicable in the case of clerical staff.

(B) GRADE I SCHEME FOR STENOGRAPHER :

(1) Graduates with type-writing Lower Grade and Short-hand Lower Grade Qualifications will be recruited as Junior Stenographers in Clerical Grade-I based on written test and practical test and interview.

(2) After the service of 6 years in Grade-I, they will be eligible for promotion to the post of Stenographers in Technical 'B' Grade based on an assessment report and D.P.C.

(3) After a service of 5 years as Stenographers in 'B' Grade, they will be considered for promotion as Personal Assistant in Technical Grade-A subject to vacancy, test and assessment/D.P.C.

(4) As regards promotion to Executive Cadre, the existing practice will continue.

(5) All the general conditions detailed in the settlement will be applicable in the case of Stenographers.

9. The petitioner's contention is that he completed 6 years of service in Grade-I by 1989 as he worked as Clerk Grade-I from 1981 to 1984, and Stenographer Grade I from 1984 to 1989 and so he is entitled to the post of Stenographer in B-Grade based on assessment report and D.P.C. The contention of the Respondent that the service of the petitioner as clerk grade I cannot be added to his service as Stenographer Grade-I and so he is not entitled to the benefit given in Annexure II(B)(2) of Ex. M-1 settlement. A reading of this annexure certainly suggests that the clerical service and stenographer service in Grade-I are treated separately for promotion to the next cadre. The petitioners service from 1984 as stenographer Grade-I was considered and he was promoted as Stenographer in Technical B-Grade from 1-3-90 notionally and with monetary benefit from 1-3-94 by Ex. W-10 proceedings dated 2-11-94. It appears that in Singareni Collieries, all promotions are given from 1st April or 1st October and so the order Ex. W-10 is notified by Ex. W-11 which states that the petitioner is notionally promoted from 1-4-90. The petitioner could have also asked for the wages of Stenographer in Technical Grade-B from 1-4-90 when he completed 6 years of service. But he did not ask the same. However, he asked for other benefit and so he can be Awarded the difference between the wages paid to Stenographer technical Grade-B and Stenographer Grade-I between 1-4-90 to 28-2-94. However, he is not entitled to add up the service of clerk Grade-I to the service of Stenographer Grade-I. No doubt, the management took a stand supporting the contention of the petitioner in Ex. W-12. "The management view points" in Industrial Disputes regarding the anomaly in seniority of Stenographers, raised before the Conciliation Officer. In the said dispute, the Steno-typist who are directly recruited as such in the year 1974 and 1975 claimed seniority over the clerks or typists who were working earlier to 1974 or 1975 but promoted as Steno-typist in 1976, 1977, 1978 and 1980. In the said case, the management counted the service of these clerks or typists as such added the same to the service of Steno-typist and put this promotees above the direct recruits in seniority. Though the management stated in "Hence, for determining entry say seniority of the stenographers Grade-I, the date of

entry into Grade-I is the determinant factor but not the date of appointment as Steno-typist or clerk", the management also referred to the clerical service and stenographer's service being taken independently by contention as follows :

With regard to the doubts or questions raised by the Vice President Singareni Coal Mines Karmika Singh that those who have entered the service as Stenographers that their seniority in the future promotions is at stake, it is to be submitted that the promotions to higher grade i.e. Grade 'B' are based on conditions of eligibility and they should have put in 5 years service in Grade-I as Stenographers and that they should appear in the test. In absence, their seniority in the promoted grade, as and when they become successful in the test, is based on seniority-cum-merit. As such the contention that their seniority in future is in jeopardy, in view of the seniority list circulated vide Circular No. P(PM) 4/2700/2399 dated 1-7-1989 is without any basis and reason. Similarly the process is the same for promotions from 'B' Grade to 'A' Grade.

As has been stated supra, the separate Cadre Schemes for Clerical Staff and Stenographers, are distinctly differentiated only from 1-7-1984 in accordance with the Memorandum of Settlement dated 26-6-1984. In accordance said Settlement dated 26-6-1984, there shall not be any up-gradation or appointment as Steno-Typist in Grade-II. Further, the promotional avenues of clerical and Stenographers Grades, which are independent Cadres have been distinctly devised in the Settlement dated 3-3-1989.

10. The evidence of MW-2 reads that the petitioner appeared for the promotion for the test and interview conducted for Grade A post in pursuance of M-6 office memo dated 4-7-95 and failed is the same as found in Exs. M-6 and M-7 notes of interview. So the petitioners is not entitled to promotion as claimed by him.

11. In the result, an award is passed holding that the petitioner is not entitled to promotion to technical Grade-B from 1-4-89 and technical Grade-I from 1-4-89 but he is entitled to the wages of technical Grade-B from 1-4-90 to 28-2-94.

Dictated to the Sr. Stenographer, transcribed by her, corrected by me and given under my hand and the seal of this Tribunal, this the 20th day of March, 1998.

V. V. RAGHAVAN, Industrial Tribunal-I

Appendix of Evidence

Witnesses Examined for

the Petitioner :

WW-1—G. Tirupathi Rao

Witnesses Examined for

the Respondent :

MW-1—J. Paul Thomas

MW-2—M. V. Sastry.

Documents marked for the Petitioner/Workmen :

Ex. W1 Appointment Order dt. 6-9-74 issued to WW1.

Ex. W2 Office Order dt. 11-8-79 of conversion of clerk Grade-II of WW1.

Ex. W3 Proceedings placing WW1 in Grade-I of Clerks Stenotypist, dt. 5/8-8-1981.

Ex. W4 Orders of Project Manager, re-disgrading WW1 as Steno-typist.

Ex. W5 Call letter to appear for the test of Sr. Stenographer Grade-B.

- Order dt. 1-7-89 of Director (P.A.C.V.) of S. C. Co. Limited regarding the Inter-Se-Seniority Grade-I as 1-1-1987.
- Representation dt. 19-2-90 given by WW1 for promotion to Grade-B.
- Representation dt. 10-3-95 given by WW1 for promotion to Grade-B.
- Representation made by the union to ALC (C) dt. 7-10-95.
- 10 Orders of the General Manager (Personnel), dt. 2-11-94 giving Grade B to WW1 from 1-3-90.
- 11 Office Order of the G. M. (Personnel) dt. 7-3-95 regarding the modification of Ex. W10 from 1-4-90 instead of 1-3-90.
- 12 Views of the Management filed before ALC regarding Anomaly in seniority of stenographers.
- 13 Office memo issued by the Project Manager, Coal Chemical Complex, S. C. Co. Ltd., Kothagudem,

Ex. W11 Copy of Office Order issued by G. M. (P), S.C. Co. Ltd., Kothagudem Collieries.

Documents marked for the Management

- Ex. M1 Settlement dt. 3-3-89 between management and 6 unions entered into on 3-3-89 U/s 12(3) of the I. D. Act.
- Ex. W2 Settlement dt. 26-6-84 between the Workmen and the management
- Ex. M3 Circular Regarding seniority list of stenographers, Grade-I, dt. 1-7-89.
- Ex. M4 Office Order dt. 16-8-89 showing the seniority list of the Stenographers.
- Ex. M5 Views of the management before ALC regarding the dispute pertaining to M3 seniority list.
- Ex. M6 Office Memo dt. 4-7-95, constituting the Departmental Promotion Committee dt. 4-7-95.
- Ex. M7 Report of the D.P.C.

